

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

1			
2			
3	GROENEVELD TRANSPORT)	
4	EFFICIENCY, INC.,)	
5)	Judge Nugent
6	Plaintiff,)	Cleveland, Ohio
7)	
8	vs.)	Civil Action
9)	Number 1:10CV702
10	LUBECORE INTERNATIONAL,)	
11	INC.,)	
12	Defendant.		

TRANSCRIPT OF PROCEEDINGS HAD BEFORE

THE HONORABLE DONALD C. NUGENT

JUDGE OF SAID COURT,

ON WEDNESDAY, OCTOBER 19, 2011

Volume 5

APPEARANCES:

For the Plaintiff:

DEBORAH J. MICHELSON, ESQ.,
DAVID A. KUNSELMAN, ESQ.,
Miller Goler Faeges
27th Floor
100 Erieview Plaza
Cleveland, OH 44114
(216) 696-3366

For the Defendant:

THOMAS L. ANASTOS, ESQ.,
MELISSA ZUJOWSKI, ESQ.,
Ulmer & Berne - Cleveland
1100 Skylight Office Tower
1660 West Second Street
Cleveland, OH 44113
(216) 583-7184

Official Court Reporter:

Shirle M. Perkins, RDR, CRR
U.S. District Court
801 West Superior, #7-189
Cleveland, OH 44113-1829
(216) 357-7106

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

1 WEDNESDAY SESSION, OCTOBER 19, 2011, AT 8:40 A.M.

2 THE COURT: What exhibits are you offering?

3 MS. MICHELSON: We are offering, your Honor,
4 PX-1 through PX-58, PX-60, 61, 63, 66, and 67, 70, 73 and
08:40:23 5 74, 79, 80, 83, 86, 87. I'm sorry, 94, okay. Am I doing
6 this right?

7 I'm sorry. I think I misread my own notes here. I
8 apologize. Okay. I am going to PX-1 through 67, 70, 73
9 through 83, 85 through 87, 94 through 133, 135 and 36, 138,
08:40:23 10 39, 40, through 42. Did I get that right? That's what
11 we're offering into evidence, submit into evidence, your
12 Honor.

13 THE COURT: All right. Which exhibits are you
14 objecting to?

08:40:23 15 MR. ANASTOS: Is that all right?

16 MS. MICHELSON: Is it? Let me check. 1
17 through 67, 70, 73 through 83, 85 to 87, 94 to 133, 135 and
18 36, 138 to 142. Okay. Thank you.

19 MR. ANASTOS: Do you want us to be able to
08:40:23 20 put on the screen the ones we object to?

21 THE COURT: No.

22 MR. ANASTOS: Okay.

23 52, 53 and 54 we object to on the grounds that they
24 deal with the autolubeparts.com web page. No evidence in
08:40:23 25 this case Mr. Eissis had any control whatsoever over that

1 web page. And it would be prejudicial to put it in front of
2 a jury. It's irrelevant. I mean it's distributor for a web
3 page set up by distributors.

4 60 and 61, I believe, were photographs that we do not
08:40:23 5 believe that have been authenticated.

6 MS. MICHELSON: I thought they were. There
7 were objections.

8 MS. ZUJKOWSKI: It's not authentication.

9 MR. ANASTOS: It's both.

08:40:23 10 MS. MICHELSON: Oh, okay.

11 MR. ANASTOS: Preliminary.

12 MS. ZUJKOWSKI: I said I didn't think.

13 MS. MICHELSON: All right.

14 MR. ANASTOS: The foundation authentication,
08:40:23 15 60 and 61.

16 THE COURT: Who testified about this?

17 MS. MICHELSON: Mr. Wapenaar did on 60 and 61,
18 your Honor. Mr. Wapenaar did testify about them. Mr. Van
19 der Hulst, Mr. Eissis in the excerpts, specifically as to
08:40:23 20 Exhibit 60, Mr. Wapenaar talked about Exhibit 61 as the
21 proud camp anniversary trailer. He took the picture and he
22 was there. He identified what it is.

23 THE COURT: Okay.

24 MR. ANASTOS: Shall I proceed, your Honor?

08:40:23 25 THE COURT: Yeah.

1 MR. ANASTOS: 70 was another exhibit related
2 to the recent pump being sold by Fuel Systems. 74 and 75
3 are Fuel Systems's web page, and 75 is a web page of an
4 entity called Lubecore Florida, LLC, which is a distributor
08:40:23 5 Lubecore in this case. It is not about the distributors.
6 79 is some grease that apparently Fuel Systems, Inc. sells.
7 81 is a brochure that Fuel Systems, Inc. puts out with
8 respect to its sale of pumps. 82 is about Advanced
9 Lubrication Systems, which is also a distributor. 95
08:40:23 10 through 102, this is a bunch of stuff that they had
11 certifications put in the record and attached trucking --
12 apparently trucking industry statistics in a consultant's
13 report. No one relied on these. No one testified about
14 them. I suppose they might get over the hearsay rule by the
08:40:23 15 certification, but if we could all try our cases by putting
16 in documents that nobody's going to testify about, that's
17 how we'd do it.

18 107 -- and they have no relevance whatsoever in the
19 case. And that's why nobody testified about them. 107, I
08:40:23 20 don't believe that anybody authenticated this document. It
21 was shown to Mr. Van der Hulst, but he was not competent to
22 testify as to what it is.

23 109 through 125, I will object to on -- these are all
24 the damages exhibits from Dr. Burke. Just for the record, I
08:40:23 25 will continue to object to those on the grounds that are

1 stated in our motion in limine.

2 126 is an invoice apparently to somebody who resides
3 in Ruatoria, which I believe is New Zealand, and we all know
4 who that refers to. This refers to Brendon Cane and his
08:40:23 5 outfit. So it's irrelevant.

6 THE COURT: It's 126?

7 MR. ANASTOS: Yes, sir.

8 And honestly, I don't even know because they would
9 introduce later in the case. 142 is Brendon Cane's
08:40:23 10 deposition. So we object to that. I don't even know what
11 136 through 141 are.

12 MS. MICHELSON: I'm happy to tell you.

13 MR. ANASTOS: Please.

14 MS. MICHELSON: 136 is the exhibit that Vendor
08:40:23 15 Director Mike DeCleene talked about. You want extra copies?

16 MR. ANASTOS: No, I know what is. DeCleene?

17 MS. MICHELSON: Yeah. 138 is Jennifer Wolfe's
18 CV. 139 is a photograph of a lineup of the pumps that -- we
19 have that as well. We can get you a copy. And then Dr.
08:40:58 20 Burke's CV is 140. And then, yes, Mr. Cane's deposition and
21 the video is 142 and we are -- we are offering it.

22 MR. ANASTOS: And what is 141?

23 MS. MICHELSON: We are not -- it's going to be
24 the -- it will be the CV of Dr. Rashidi, who is going to be
08:40:58 25 a rebuttal witness we are planning to call to testify, your

1 Honor. So I can wait on that until the rebuttal case.

2 THE COURT: What are the photographs ranging
3 from? I don't have that. 136, 141.

4 MS. MICHELSON: Can you please give to the
08:40:58 5 Court 136, 138 through 142?

6 THE COURT: I just need the photographs. I
7 know what the CV's are and the transcript is.

8 MS. MICHELSON: Okay. The Judge has asked --

9 MR. ANASTOS: Okay. With respect to the
08:40:58 10 brochure that Mr. DeCleene brought from that trade show, we
11 believe that it was misleading because there was an effort
12 to show that the Lubecore portion of that document was in
13 black and white. We were not presented with the whole
14 document. The jury was not presented with the whole
08:40:58 15 document, and we looked through -- when we looked at it
16 sitting here afterwards, the color -- the cover was in color
17 and everybody's -- everybody's exhibit information was in
18 black and white, and we think it's prejudicial for the
19 entrance to be drawn.

08:40:58 20 THE COURT: What number is that?

21 MR. ANASTOS: That was 136.

22 THE COURT: Okay. I don't have that.

23 MR. ANASTOS: I don't -- I don't have a copy
24 of it in front of me right now. 136.

08:40:58 25 MS. ZUJKOWSKI: That's just the two pages, but

1 yeah.

2 MS. MICHELSON: I didn't keep the whole thing,
3 but --

4 MS. ZUJKOWSKI: Well, he used it on the stand.
08:40:58 5 She asked him to show him, it was the color of the copy.
6 And it left the inference that ours was the only non-colored
7 ad, and we need the whole brochure.

8 MR. ANASTOS: Document in evidence.

9 MS. ZUJKOWSKI: The full document would show
08:40:58 10 the jury that everyone's ad was in black and white.

11 MS. MICHELSON: I think you made that point,
12 didn't you?

13 MS. ZUJKOWSKI: No, I didn't. That was after
14 you -- he came up and Mike DeCleene gave us the exhibit the
08:40:58 15 first time.

16 THE COURT: I think he testified that --

17 MS. ZUJKOWSKI: He testified that the copy --
18 first he testified that he didn't know if everything was in
19 black and white, and you went up on redirect and said what
08:40:58 20 is the -- is the front cover of that thing in color, and he
21 said yes, and he left it at that.

22 THE COURT: Right.

23 MR. ANASTOS: And we didn't get a chance to
24 ask whether all the other exhibits --

08:40:58 25 MS. ZUJKOWSKI: We never saw anything.

1 MS. MICHELSON: Yes. I handed it to you.

2 THE COURT: I got it. I got it.

3 MR. ANASTOS: I still don't know what 137 is.

4 Pictures?

08:40:58 5 MS. MICHELSON: Well, that might be part of
6 the rebuttal case as well, and -- what the case-in-chief is.

7 MR. ANASTOS: Object to the Wolfe CV for the
8 grounds we stated previously. 139 is pump photos?

9 MR. KUNSELMAN: Yes.

08:40:58 10 MS. MICHELSON: You need a copy of that?

11 MR. ANASTOS: I do.

12 THE COURT: Is the jury up, Jeanie?

13 DEPUTY CLERK: They were on their way up. So.

14 THE COURT: Let me know.

08:40:58 15 DEPUTY CLERK: She wasn't sure if they were
16 all even here.

17 MR. ANASTOS: We're okay with 139. 140, the
18 Burke curriculum vitae, we object to for the grounds we
19 stated. 141, the CV of Dr. Rashidi. He is supposedly going
08:40:58 20 to be offered as a rebuttal expert. We have no expert
21 witnesses. So we object to his -- his CV. And 142 I think
22 we already stated is the deposition of Brendon Cane, and we
23 object to that being included.

24 THE COURT: Okay. What's the relevance of 52,
08:40:58 25 53 and 54, Ms. Michelson?

1 MS. MICHELSON: The relevance is, your Honor,
2 likelihood of confusion on uncertainty in the marketplace
3 about the source and the relationship of the two companies,
4 the source of the products, the relationship of the
08:40:58 5 companies. It's information that's publicly available.
6 It's advertising materials. There is -- there is not a
7 requirement that Mr. Eissis controlled the web site, rather
8 he allows it to exist, he knows it exists. There are
9 hyperlinks to his own web site, which he does have to allow,
08:40:58 10 and it is -- it is relevant to the confusion -- the
11 confusion elements in the case. It is authenticated. There
12 is law that we have submitted to the case to the Court in a
13 memorandum of law on the admissibility of this kind of
14 evidence, specifically as well I believe in these kinds of
08:40:58 15 cases.

16 THE COURT: How about -- how about 60 and 61,
17 photos?

18 MS. MICHELSON: I'm sorry, did you --

19 MR. KUNSELMAN: 60 and 61.

08:40:58 20 MS. MICHELSON: And they object to the basis
21 of authentication?

22 MS. ZUJKOWSKI: I think it's really
23 foundation.

24 MS. MICHELSON: Because my understanding was
08:41:36 25 there wasn't going to be objections on authentication, but

1 I -- notwithstanding, the document has been both of them
2 have been authenticated, and there has been a sufficient
3 foundation. A photograph is authenticated properly by
4 testimony that the thing -- of what the thing in it depicts,
08:41:36 5 that the photograph depicts what is in it, and there was
6 testimony on Exhibit 60 by Mr. Van der Hulst, by
7 Mr. Wapenaar, and Mr. Eissis himself has testified that it
8 is the Lubecore pump in the photograph. And on 61,
9 Mr. Wapenaar, that's the Lubecore Kreilkamp "Anniversary
08:41:36 10 Trailer" photo, he said. He testified to what that was and
11 that the -- and where he even got that picture. And as to
12 60, I don't -- I don't even know that that was a dispute
13 because Mr. Eissis has freely admitted and testified
14 throughout this case that they were at the Toronto trade
08:41:36 15 show, and this was a picture of his pump being launched, the
16 product in Toronto. So I don't really know what the problem
17 is on that.

18 MR. ANASTOS: I'm not sure any of that
19 testimony was submitted in their case. That's what we're
08:41:36 20 talking about; not what happened in depositions.

21 MS. MICHELSON: Did --

22 THE COURT: Yeah, I don't remember that
23 either.

24 MS. MICHELSON: And I don't want to misspeak.
08:41:36 25 I really don't, your Honor, but I do believe I put it in as

1 part of Mr. Eissis' excerpt testimony.

2 THE COURT: We can hold off on that.

3 MS. MICHELSON: But, I can check that because
4 I don't want to misstate anything to the Court.

08:41:36 5 THE COURT: And 70, who testified about that?

6 MS. MICHELSON: You're not going to object to
7 67?

8 THE COURT: He didn't -- hear me out. Who
9 objected to -- what's the -- what is 70 and why is it
08:41:36 10 relevant? Who testified about it?

11 MS. MICHELSON: The relevance is that when
12 distributor -- the relevance is to the labeling issue here.
13 And in this case, the Defense has taken the position that
14 nobody -- that the label says it all, and that labeling is
08:41:36 15 dispositive here, and the fact that there is evidence of
16 relabeling a product in the industry, relabeling products by
17 people involved in this industry, relabeling of our products
18 by Lubecore distributors, and the -- and the -- as well as
19 all the multiple labels that appear on all these products,
08:41:36 20 it's relevant. I understand they're going to argue about
21 that, but that does not make it not relevant. In fact, it
22 makes it highly relevant.

23 THE COURT: Got you, got you, got you.

24 All right. And 74 and 75, web page again?

08:41:36 25 MS. MICHELSON: 74, yes, 75 -- as to 75, I

1 will, with candor, your Honor, tell you there has not been
2 testimony in this trial on that web page. And I don't want
3 to misrepresent anything to the Court along those lines. As
4 to the other web pages, there has -- that we're seeking to
08:41:36 5 offer, there has indeed been testimony on it. And so I
6 would bring that to the Court's attention.

7 THE COURT: 79 is a picture of?

8 MS. MICHELSON: Yes, Mr. DeCleene testified to
9 that.

08:41:36 10 THE COURT: What's the relevance?

11 MS. MICHELSON: Relabeling of grease and
12 products and associated products. Again, it's the
13 relabeling issue. And in this particular picture, what's
14 relabeled is Lubecore grease with a green label that has
08:41:36 15 Groeneveld, other identifiers on it. Again, it goes to
16 this -- the confusion and uncertainty that's being generated
17 here about the relationship, in a relationship connection,
18 quality of the products and those sorts of issues.

19 THE COURT: Okay. 81 and 82?

08:41:36 20 MR. ANASTOS: There's no evidence that that --

21 THE COURT: I understand.

22 MR. ANASTOS: -- relabeled was Lubecore
23 grease.

24 THE COURT: Right. I understand. 81 and 82?

08:41:36 25 MS. MICHELSON: Okay. Let me take a quick

1 look, your Honor. Yes, I will tell the Court I do not
2 believe there was testimony thus far on 81. 82, that's
3 Scott Marcum's web site, and he -- he, you know, the
4 representation here was that Mr. Marcum, they were going to
08:41:36 5 play Mr. Marcum's entire testimony, and he does authenticate
6 this, and he does discuss it in the excerpts that we
7 offered. I understood that there was not going to be any
8 kind of objection to authentication. And based on that, I
9 didn't -- I didn't pull out additional testimony from
08:42:03 10 Mr. Marcum, but it's a web page and --

11 THE COURT: How is it relevant to this case?

12 MS. MICHELSON: It explains the different
13 systems, and it explains and is part of Mr. Marcum's
14 testimony. It -- Mr. Marcum, in the -- in the excerpts that
08:42:07 15 we put in, Mr. Marcum specifically talks about things on his
16 web page, and to see in context what he said about it, and
17 then what is in here, that is my argument there, your Honor.

18 THE COURT: Okay. Then we have 95 to 102.

19 MS. MICHELSON: And I will just tell you, your
08:42:07 20 Honor, my team over here did confirm in the Eissis excerpts
21 that we offered in, Mr. Eissis himself did, in fact,
22 identify and authenticate Exhibit 60.

23 THE COURT: Got you.

24 MS. MICHELSON: And I'm sorry, sir. You
08:42:11 25 wanted --

1 THE COURT: 95 to 102, the certification of
2 records.

3 MS. MICHELSON: They're certified copies of
4 records about the truck industry. On one of them, there was
08:42:11 5 specific testimony, in the very least, PX-101. But, in any
6 event, it's relevant to the market and the availability
7 market in the area for expansion. In the industry, which
8 as we all know, had briefed all these issues as we have,
9 expansion, expansion, room for growth. That is one of the
08:42:14 10 eight factors in the likelihood of confusion analysis;
11 expansion in the marketplace. And the there is an open
12 marketplace that contributes to a likelihood of confusion or
13 uncertainty. And it's -- they're certified business
14 records. They're certified government records. I --
08:42:14 15 they're authenticated, and they're admissible under the
16 Rules of Evidence.

17 THE COURT: 107.

18 MS. MICHELSON: 107, yep, Mr. -- these are
19 Lubecore documents that were submitted. They're -- I
08:42:17 20 believe Mr. Van der Hulst talked about these. They're
21 Lubecore assembly drawings of its pump that Mr. Van der
22 Hulst commented on. That's what they are.

23 THE COURT: Okay. Okay. Then I know you've
24 got Burke's paperwork. And 126?

08:42:17 25 MS. MICHELSON: Your Honor, I will again

1 candidly tell you with respect to 126 and 122, we understand
2 the Court's ruling on those items. They are related to
3 Brendon Cane. They were part of our proffer so that we can
4 make a record. We, of course -- I don't want to spend your
08:42:21 5 time repeating our arguments there. I believe you --

6 THE COURT: All right.

7 MS. MICHELSON: -- already heard them.

8 THE COURT: Exhibit 52, 53, 54, 70, 74, 75,
9 79, 81, 82, 95 through 102, 109 through 125, 126, 142, 141's
08:42:24 10 not offered, 137's not offered. The objection is sustained.

11 139, the objection is overruled. 60 and 61, the objection's
12 overruled. And now you have to tell me 136 is what again?
13 Oh, I got it. The objection is sustained. 137 is the CV's
14 of both Wolfe and Burke. The objections are sustained as to
08:42:24 15 the CV's.

16 MR. ANASTOS: There's one that -- I don't know
17 if we got Ms. -- I think we objected to 57 as the Fuel
18 Systems, Inc. also. We did not?

19 THE COURT: No. We'll do the Rule 50 motion
08:42:27 20 on a break. Are we ready?

21 DEPUTY CLERK: Yeah.

22 THE COURT: Okay.

23 (Proceedings resumed in the presence of the jury:)

24 MS. MICHELSON: I'm sorry to interrupt, your
08:42:27 25 Honor. We didn't hear the last thing you said on 57. We

1 didn't catch that.

2 THE COURT: He didn't object to it.

3 MS. MICHELSON: All right.

4 THE COURT: So you see that Shirle brought her
08:42:27 5 sister, Gloria, here today, huh? Well, I know some of you
6 had a tough time getting in. As soon as we have one or two
7 rain drops, we can't figure out which highway is knocked out
8 or something like that. But, we appreciate your promptness.
9 Okay.

08:42:46 10 You can continue playing Mr. Vermeulen's testimony.

11 (Videotape of Martin Vermeulen continued.)

12 THE COURT: Didn't they tell us yesterday this
13 was two hours long?

14 MR. ANASTOS: Two hours more we said, your
10:19:11 15 Honor.

16 THE COURT: I don't think so.

17 (Laughter.)

18 THE COURT: I know you were paying attention.
19 We were already listening three hours. Anyway I guess we
10:19:20 20 have a half hour more to go. So we'll take our break,
21 morning recess at this time. So keep in mind the
22 admonition.

23 (Thereupon, a recess was taken.)

24 THE COURT: That's one of the prices you get
11:14:49 25 for living in America.

1 (Laughter.)

2 THE COURT: They have this thing all set up
3 and established after a lot of things occurred to try to
4 have it work like clock work. If the real thing happened,
11:14:58 5 we wouldn't know. We'd have to just go.

6 So you can continue playing Mr. Vermeulen.

7 (Videotape of Martin Vermeulen played.)

8 MR. ANASTOS: That's the end, your Honor.

9 THE COURT: Okay. Call your next witness
11:24:01 10 then.

11 MR. ANASTOS: We call Mr. Jan Eissis.

12 THE COURT: Mr. Eissis.

13 You notice we're not going to administer the oath
14 again of the once a person has testified in the hearing and
11:24:12 15 resume the witness stand. No need to readminister the oath.
16 Just identify yourself for us.

17 MS. MICHELSON: Excuse me, your Honor. Your
18 Honor?

19 THE COURT: I can hear.

11:24:25 20 MS. MICHELSON: Yes, the testimony that
21 Mr. Eissis gave previously wasn't live in court. So I don't
22 know if that has impact on the need to administer an oath
23 or not. I just thought I'd mention it.

24 THE COURT: Thought you'd remind me? Go
11:24:42 25 ahead.

1 I wouldn't think you put a witness on that didn't take
2 an oath.

3 MS. MICHELSON: Correct. I didn't know if it
4 had an impact.

11:24:54 5 THE COURT: Okay.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Eissis - Direct

1 JAN EISSIS,
2 of lawful age, a witness called by the DEFENSE,
3 being previously duly sworn, was examined
4 and testified as follows:

11:24:55 5 DIRECT EXAMINATION OF JAN EISSIS

6 BY MR. ANASTOS:

7 Q. Good morning, Mr. Eissis.

8 A. Good morning.

9 Q. How are you today?

11:24:59 10 A. Good.

11 Q. Mr. Eissis, is there any family members of yours in
12 the courtroom today?

13 A. Yes, there are.

14 Q. Would you?

11:25:07 15 A. My wife Linda and my son Cameron are here.

16 Q. Can you please tell the jury a little bit of your
17 background?

18 A. I have part of it.

19 Q. Education, where were you born, when did you come to
11:25:22 20 an English-speaking country?

21 A. Okay.

22 I was born in a small town in the Netherlands called
23 Dwingeloo, northern part of Holland.

24 THE COURT: Probably have to spell that for
11:25:32 25 us.

Eissis - Direct

1 THE WITNESS: Excuse me?

2 THE COURT: Probably have to spell the town.

3 THE WITNESS: Oh, D-W-I-N-G-E-L-O-O.

4 THE COURT: Go ahead.

11:25:43 5 THE WITNESS: I was born in Hammond, but I
6 grew up in Dwingeloo.

7 (Laughter.)

8 THE COURT: That cleans it up.

9 THE WITNESS: Sorry about that. And I grew up
11:25:53 10 there. I went to school in high school. After high school
11 I went to a technical school. It's called the middle
12 technical school. So you first have a common education like
13 high school. At about the age of 16, you can choose a
14 technical direction. That's what I did. So I focused on
11:26:10 15 mechanical engineering. It's three years in the classroom
16 and one year in the field, with different companies. After
17 that, because my dad had a small garage car dealership, I
18 went and took an additional year that was more focused on
19 automotive. And after that year I took a commercial course
11:26:30 20 for a year, and that was also focused on the automotive
21 industry. So I did six years after high school. However, I
22 do not have a university degree. It's more like a medium
23 level, I think. So then in 1986 I ended up working in
24 Canada for three months to learn the English language
11:26:56 25 better. I wanted to speak technical English better. I

Eissis - Direct

1 worked in garage there, and I noticed how a lot of trucks
2 came in there were replacing kingpins and hangers and
3 components you normally had to grease. I also had to grease
4 myself by hand. This was in Canada. We did a lot of work
11:27:15 5 for a company called Superior Propane. So I actually,
6 literally lying on the back the knees of the tank trucks and
7 pumping the grease and the meantime on the tanks and the
8 reservoir is kind of turning down the tanks, come to the
9 middle greasing components, and it was all dripping on me.

11:27:31 10 Electrical lying on the ground and you run over that
11 and get shocked once in a while, and I thought I just can't
12 imagine, you know, that people don't use automatic
13 lubrication system because I had seen those in the
14 Netherlands, during my education. And in the period before
11:27:47 15 that, for my school, I worked at a truck dealership, and a
16 lot of the trucks were getting automatic lubrication system.
17 So even though I intended to actually get into my dad's
18 business, I then thought it might be an opportunity that I
19 started a business in automatic greasing in Canada.

11:28:06 20 Automatic greasing systems there had a good time. So after
21 that, I sent an automation to several companies. I sent it
22 away to Vogel, to Groeneveld, and to Lincoln. Those are the
23 three companies I had seen in the Netherlands.

24 And those three companies, you know, Canada responded
11:28:25 25 from Lincoln. I found out that they had quite a network

Eissis - Direct

1 already in Canada, and there was not really a spot for me.
2 Vogel already had one distributor in Canada, and Groeneveld
3 responded that they really didn't have anybody in Canada.
4 So I ended up visiting Groeneveld as well. I had meetings
11:28:44 5 or a meeting with a gentleman from Lincoln that came by, who
6 told me pretty much there was an opportunity. So I started
7 looking at the Groeneveld Products. And actually, just
8 before that, then I got called in to go into the army, like
9 mandatory serve in the army. Ended up, you know, going into
11:29:03 10 the army. And after three or four months I got released
11 because of my plans to immigrate. So I had to talk to the
12 captain in my unit, and I told them I was immigrating to
13 Canada to start his business. So that if push came to
14 shove, I wouldn't be fighting for it and invest money in me.

11:29:22 15 So I showed integration intentions, got released out
16 of army for a reason, and ended up immigrating to Canada in
17 January, 1988. So I came to Canada.

18 Q. Let me stop you there and ask, you came to Canada; did
19 you form a company when you came to Canada?

11:29:38 20 A. Yes.

21 Q. What was the name of that company?

22 A. The company was called Canadian Precision Lubrication
23 System, and I was CPL Systems. That's what it was.
24 January, 1988, I started.

11:29:51 25 Q. What was the business of CPL?

Eissis - Direct

1 **A.** Automatic greasing systems.

2 **Q.** Which automatic greasing systems did you distribute?

3 **A.** I bought ten automatic greasing systems from
4 Groeneveld, and my mom bought me a new suit, and I
11:30:11 5 immigrated to Canada.

6 **Q.** Did you become an authorized distributor for
7 Groeneveld?

8 **A.** It was not really an authorized distributorship. At
9 one point, they gave me a letter of intention to do business
11:30:23 10 with me. But, it kind of -- it was more or less, I guess,
11 formal because they sold me the products. When the company
12 started evolving, the letter of intent was written for the
13 Ontario or southern Ontario if I remember well. What ended
14 up happening was I think we actually became quite

11:30:44 15 successful, the CPL, and I started assessing up distributors
16 for myself. I recognized how large the country was, and you
17 know, drive four or five hours to the next town is quite
18 common, and I realized I had a problem. Four or five hours
19 away, that I could not effectively serve as that. Customer
11:31:05 20 would call me, "My grease system does not work," nobody

21 really knew a lot about these things. So I had to drive
22 five hours to go fix it. So I chose to find technical
23 people that could fix the systems and they became

24 distributors, or dealers as they called them and, you know,
11:31:23 25 Groeneveld just kept selling me parts. And before you know

Eissis - Direct

1 it, we had a nice business going in Canada, selling many,
2 many automatic greasing systems. And through a distributor
3 network CPL systems, all the distributors took on my name,
4 and that's what happened.

11:31:44 5 **Q.** And you eventually expand that distributorship network
6 into the United States?

7 **A.** No, not really. But, eventually what happened is that
8 my company was bought by Mr. Groeneveld. It was in 2001,
9 Groeneveld had actually, in the meantime, started in the
11:32:04 10 United States themselves. And we got conflicts over
11 customers because customers that would be both in Canada and
12 the United States. For example, Safeway Foods in those
13 days, so now Groeneveld was going after what I considered to
14 be my customers, and we had -- we had conflicts about that.
11:32:26 15 And at that time, Mr. Groeneveld offered me money to sell
16 the company, and I thought about it. And in 2001 I sold
17 part of the company, and 80 percent actually, and in 2004 I
18 ended up selling the rest.

19 **Q.** Okay. Let's back up just a little bit. The --

11:32:54 20 **A.** Watch it. It's leaking, Tom.

21 **Q.** This pump has been marked as Defense Exhibit A. Do
22 you recognize this pump?

23 **A.** Yes.

24 **Q.** Is that the pump that you -- is that the EP-0 pump for
11:33:16 25 Groeneveld that you were selling from CPL in 1988?

Eissis - Direct

1 **A.** No, I sold a different pump than that.

2 **Q.** Showing you what's been marked as DX-Y, would you like
3 me to bring it up there? I will.

4 **A.** I believe you.

11:34:02 5 **Q.** Do you recognize this pump?

6 **A.** Yes, I do.

7 **Q.** What pump is that?

8 **A.** That is a pump that I came to Canada in 1988. Those
9 are the pumps that were on my pallet, that style of pump,
11:34:15 10 and I sold to -- many of them for the first, I would say at
11 least a couple of years, that was the pump that we sold.

12 **Q.** How does that pump differ from the pump that's
13 marked -- how is the pump marked DX-Y different from the
14 pump marked DX-A?

11:34:34 15 **A.** I would have to look at the stickers here. If you
16 bring them over here, I can show the difference. If you
17 want me to go there, I can do that, too.

18 **Q.** I think you better stay by your microphone. You're on
19 tape.

11:34:44 20 **A.** Okay. Okay. These two pumps here are totally
21 different. You see first of all, the reservoir glass was
22 different. The reservoir glass is made out of one piece
23 here, and it has two external vents on the outside. Then
24 also on this housing here, this here, like the reservoir
11:35:22 25 bolts down with the bolts, and you can see how the pump

Eissis - Direct

1 housing there, it's clearly different than the pump housing
2 of this pump. Like this pump is all the way around, and the
3 reservoir glass is actually hold on by the guide rod and by
4 the lid. So also this pump here has a -- a steel plate in
11:35:42 5 the bottom, and this steel plate is compared to an aluminum
6 casting in the bottom of this pump.

7 Obviously this pump comes out of a different tool to
8 make it to aluminum then the pump over here.

9 MS. MICHELSON: Objection, foundation.

11:36:01 10 THE COURT: Overruled.

11 THE WITNESS: These -- the issues that we had
12 with this pump, for example, is when it caught cold in
13 Canada. It started to freeze because this is an aluminum
14 housing and had a steel plate. There was a holding in
11:36:17 15 between there. So we have problems. We had air leaks in
16 the field. So people say my system comes on, what happens?
17 Air supply to the bottom through solder rod. The steel
18 plate would act different than the aluminum in the cold
19 weather and actually create an air leak in the bottom of the
11:36:33 20 pump. So my customers are complaining your pumps are
21 leaking air.

22 Another thing was this reservoir glass. The reservoir
23 glass is a big problem for us because it does not have a
24 follower plate. The follower plate was very important
11:36:46 25 because if you put this pump straight up, if you look in the

Eissis - Direct

1 inside there, there's actually a hole in the center. That
2 hole is where the grease has to suck in. There's a piston
3 inside that goes down. It creates a vacuum, and it sucks
4 the grease in.

11:37:01 5 When the grease is being sucked in, the grease, you
6 can expect the levels on the top here. What happens is that
7 the grease in the middle is sucking in. So we would have
8 pumps that on the outside look like they were three-quarters
9 full, and the customer would call, say my system is not
11:37:19 10 greasing, my pump is not working, and we would find out then
11 that the grease had actually made a little hole right into
12 the middle and on the inside it was actually sucking air.

13 So the problem was in the climate we had there.
14 That's the grease would not shut down to the bottom of the
11:37:35 15 pump, and the people could only run the pumps for a very
16 limited amount of time before they would suck air and stop
17 working. So there was a big problem for us to deal with.

18 So inside this pump, was an aluminum piston, and this
19 aluminum piston had air leaks for that. This check fall on
11:37:55 20 the side of this pump here, installed about 120 of these for
21 at least CN Rail, one of my first large deals. And CN Rail
22 actually had problems that the pumps would not come off
23 pressure, so this little shut off valve that goes inside
24 here. Like if you take the pump from Groeneveld, the
11:38:16 25 cut-away, you could see that, but it would get stuck. So I

Eissis - Direct

1 actually had to go across Canada to every 150 miles of
2 railroad to get shut off valves out of the pump and get them
3 fixed. So I realized I needed help, and that's where I got
4 really convinced I had to work with the distributors to go
11:38:34 5 across Canada and to fix these -- to fix these problems.

6 So that was just some of the differences that you can
7 just clearly see on the outside of this pump. Another you
8 can see with this pump here, for example, is that the bolts
9 here are corroded in the housing like these are steel bolts,
11:38:50 10 and they go into aluminum housing so if you want to take
11 this pump off, these -- these bolts would break off and then
12 rotted actually in this housing. So if I wanted to take
13 that out, I take a hammer to it, actually break the ears off
14 the pump. So that's a number of things that were not good
11:39:07 15 about this pump.

16 So at that time, Vermeulen was working at Groeneveld.
17 I would complain about these things. And he basically took
18 some of my input, and the next pump that I received looked a
19 lot like this one here.

11:39:20 20 **Q.** Let's back up a second, Mr. Eissis.

21 The pump that's been marked DX-AA, that is an EP-0
22 pump?

23 **A.** DX-8A?

24 **Q.** Excuse me. AA, the shorter one.

11:39:34 25 **A.** Oh, no this is the A, actually.

Eissis - Direct

1 Q. AA. No, I'm sorry. Y. My mistake?

2 A. The DX-Y, yeah?

3 Q. DX-Y. Is that EP-0 pump?

4 A. Yes.

11:39:43 5 Q. And that's the pump you were selling for Groeneveld in
6 1988?

7 A. Yes.

8 Q. Okay. Are you aware of another pump EP-0 by
9 Groeneveld that preceded that one?

11:39:56 10 A. Yes, I do, I am.

11 Q. I'm putting in front of you what's been marked as
12 DX-AA. Do you recognize that?

13 A. Yes, I do.

14 Q. Where do you recognize it from?

11:40:27 15 A. I recognize it from being in the Netherlands. I would
16 say in 1986 when I was working at a truck dealership, and I
17 recognize it from being on equipment that was already on the
18 road. Like this pump was an earlier predecessor of this
19 pump here, and that pump I had folders of it actually on
11:40:49 20 machines, and I've seen it on the road myself, and this pump
21 actually -- I actually found a few of them used in Canada.

22 Q. Can you describe, please, to the jury -- first of all,
23 is that an EP-0 pump?

24 A. Yes, that is an EP-0 pump.

11:41:07 25 Q. Single stroke?

Eissis - Direct

1 **A.** Yes, it is.

2 **Q.** Piston operated?

3 **A.** Yes.

4 **Q.** And the -- one that's marked DX-Y next to it, is that
11:41:14 5 a single-stroke pump?

6 **A.** Yes.

7 **Q.** Piston driven?

8 **A.** Yeah.

9 **Q.** Okay. Can you please explain to the jury the
11:41:20 10 differences between DX-AA and DX-Y?

11 **A.** This first one here?

12 **Q.** Yes.

13 **A.** Okay. This is the DX-AA, correct. So DX-AA has again
14 a similar housing on the bottom there. However, like you
11:41:40 15 can see here is if you look on the front of this pump, in
16 the bottom, in the bottom of this pump is an extra check
17 valve, right here for that. In this particular pump here,
18 that's actually very similar to this one as well. Right
19 here is a pressing switch for the check valve. This
11:42:06 20 particular pump here does have that. This pump just has a
21 bolt here. You can see as a result of that, that the pump
22 of this pump is shaped different again because the check
23 valve is not in there and the channels are. You can see the
24 casting is different there again. This pump again does not
11:42:25 25 have ears. Also inside this pump, you see a little plate

Eissis - Direct

1 here or an effort. You see an internal vent. There's a rod
2 that goes through the center that is kind of off center
3 there. On this side here, that's an internal vent. And
4 this here is a rod that holds to the reservoir down. So
11:42:42 5 this reservoir down here is held down from not in the
6 middle, to where, for example, this pump here, this is held
7 down in the middle. So this pump here, you can actually use
8 a follower plate with. That's what Martin was talking about
9 as well. In here you could not do that because the way this
11:43:01 10 is all situated. So inside that pump -- I never sold this
11 pump but work with it. I see them on the road, see them in
12 the field, but that pump inside I don't know that well.
13 Actually would somebody have a little napkin or -- thank
14 you.

11:43:45 15 **Q.** You can keep that. The pump that was marked DX-Y, the
16 one we were just looking at?

17 **A.** DX-AA, this one here.

18 **Q.** Yes, sorry. AA. My mistake. Thank you. It doesn't
19 have a follower plate, but there's something inside the
11:44:02 20 reservoir, isn't there?

21 **A.** Yeah, that's actually this blade, this round circle
22 thing here. I think they tried to do that to stop the
23 cavitating, that funneling. However, I don't think it
24 worked because they didn't put it in this one, but I don't
11:44:18 25 know about that myself.

Eissis - Direct

1 Q. Now, you were here earlier when Mr. Van der Hulst
2 testified, weren't you?

3 A. Yeah.

4 Q. I believe Mr. Van der Hulst's testimony was that this
11:44:32 5 pump, meaning the far one, the one you just pointed to,
6 which is DXA?

7 A. Correct.

8 Q. Came into existence in the early 80's and the look
9 hadn't changed except for only minor tweaks. Do you recall
11:44:49 10 that?

11 A. Yes.

12 Q. Do you agree with that testimony?

13 A. No, I don't. I think these pumps look totally
14 different.

11:44:54 15 Q. For the reasons you stated?

16 A. Pardon?

17 Q. For all the reasons you already stated?

18 A. Yes.

19 Q. When did you start selling the pump that's been marked
11:45:05 20 as DX-A? Not that one.

21 A. This one here?

22 Q. Yeah.

23 A. That pump, actually I don't exactly know. I tried to
24 go by the photos, but I believe that that was early in the
11:45:20 25 early 90's.

Eissis - Direct

1 Q. Okay.

2 A. Like I would say, very early 90's, like '91 or so or
3 '90 maybe.

11:45:30

4 Q. I'm going to clear these out of your way so everybody
5 can see you.

6 A. Okay.

7 Q. And I need to borrow my handkerchief.

8 A. Yeah, I thought you didn't want it back.

9 THE COURT: You told him he could keep it.

11:45:48

10 MR. ANASTOS: I said borrow.

11 THE COURT: I thought you said he could keep
12 it.

13 MR. ANASTOS: No. I only said I want to
14 borrow it back.

11:46:08

15 THE WITNESS: Actually, you're nice to me,
16 Debbie. I can't believe it.

17 (Laughter.)

18 MR. ANASTOS: It's early in the day.

19 THE WITNESS: I know.

11:46:17

20 MS. MICHELSON: I won't respond.

21 (Laughter.)

22 BY MR. ANASTOS:

23 Q. Now, I think you've already said this, but there did
24 come a time that you sold your business, CPL, to Groeneveld;
11:46:36 25 is that correct?

Eissis - Direct

1 **A.** Yes.

2 **Q.** And when was that?

11:46:51

3 **A.** I sold 80 percent of my shares in CPL Systems in 2001,
4 and the other 20 percent actually was end of 2003, supposed
5 to become effective in beginning in '04.

6 **Q.** Did you continue to work for Groeneveld then?

7 **A.** Yes, I did.

8 **Q.** What was your position?

11:47:04

9 **A.** I'm more or less kept them doing what I did, and I
10 called myself the president at that time.

11 **Q.** So --

11:47:20

12 **A.** Essentially what I was doing involved sales marketing,
13 installation, writing technical bulletins. I always call it
14 overcoming obstacles and providing tools for the people that
15 I work with.

16 **Q.** In your experience working with the pump that's been
17 marked as DX-A, the pump at issue in this litigation?

18 **A.** Okay, yeah.

11:47:33

19 **Q.** What was your assessment of that pump when you were
20 working with it?

21 **A.** Can you please repeat that?

22 **Q.** What was your assessment of that pump when you were
23 working with it?

11:47:43

24 **A.** I was excited to see that some of the issues that we
25 had that were -- that were being dealt with, the cavitation,

Eissis - Direct

1 the follower plate, the different things, mounting of the
2 reservoir.

3 Q. Did you think it was a good pump?

4 A. Yes.

11:47:54 5 Q. Did you think that any other pumps in the industry
6 were better, any other single stroke pneumatically driven
7 pumps?

8 A. No, actually I pretty much let Groeneveld bleed blood,
9 I would say, and I like that pump a lot, yeah.

11:48:09 10 Q. Did the re come a time when you and Groeneveld parted
11 ways?

12 A. Yes.

13 Q. When was that?

14 A. That happened in January of 2007.

11:48:19 15 Q. What happened?

16 MS. MICHELSON: I'm going to object, your
17 Honor.

18 THE COURT: Overruled.

19 THE WITNESS: What happened was I had made a
11:48:28 20 new -- at the end of 2003, the way my contract read from
21 Groeneveld is that when they bought 80 percent of the
22 shares, the last 20 percent, I would stay on for three years
23 and then after three years, they are going to buy the last
24 30 percent of the shares. And at that time, I actually
11:48:44 25 thought I wanted to go into real estate. I got a little bit

Eissis - Direct

1 of -- I got money for the company from Groeneveld, and I had
2 an uncle that was in real estate. And he was quite
3 successful, and I thought that I would want to do what he
4 did. And we actually ended up buying some real estate, and
11:48:59 5 I couldn't think of anything more boiling than that. I
6 just -- I just didn't like it at all. We did pretty much on
7 the side then. We had a few investments. So when the end
8 of 2003 came around, or even just before that, Groeneveld
9 approached me and he asked me because at that time we were
11:49:17 10 selling a lot more product in Canada than his own company he
11 was selling in the United States. And Canada's only
12 one-tenth of the market of the United States. So he asked
13 me if I wanted to be involved in running his business into
14 the United States as well. And so what ended up happening
11:49:33 15 was I made a plan for him. I said I would want to do it the
16 same way I did it in Canada. And I came to that plan to
17 him, and then he asked me to make a ten-year commitment to
18 his company to save ten years to grow the company in the
19 United States.

11:49:47 20 MS. MICHELSON: Objection.

21 THE COURT: Overruled.

22 THE WITNESS: And for me to -- ten years
23 seemed like a lot of time. I was, you know, early 40's, I
24 would say at that time. And I couldn't see myself making a
11:49:58 25 ten-year commitment to anybody. So I -- we made a year

Eissis - Direct

1 commitment. So I had a six-year deal with Groeneveld. I
2 had a bonus agreement, a signed bonus agreement, and there
3 was a six-year plan where they wanted to grow -- you know,
4 into the United States. And there was a bonus formula
11:50:19 5 attached to that, and the bonus formula was based on about
6 15 percent Groeneveld people growth. I ended up growing the
7 company more than 30 percent per year. So in three years
8 time, we pretty much doubled the company in size, and as a
9 result, my bonuses were quite lucrative. It was a good
11:50:36 10 time, and I must say I really enjoyed that time as well
11 because, you know, we could -- we could move things. We
12 could make plans, and we could -- we could go ahead. So
13 then what happened is that in November of 2008, all of a
14 sudden, there was a total change of November of 2006. There
11:50:54 15 was a budget meeting. I was asked to produce a budget with
16 30 percent growth. I was excited about it because it meant,
17 you know, another -- we did 33 million in sales at that
18 time. And so it meant an extra 10 million in sales. It
19 meant hiring extra sales people, hiring extra mechanics,
11:51:12 20 coming up with ways to find \$10 million more business in one
21 year. So it was an exciting plan for me. We presented a
22 plan and essentially never looked at my plan and they
23 totally changed direction, said we're not going to do this
24 anymore. We are now -- we actually want you to not grow any
11:51:29 25 more at all, and we want you to reduce costs, and we want

Eissis - Direct

1 you to totally change.

2 So as part of that, I had to fire 30 people. And I
3 had to pay difficulty with that. Those 30 people are people
4 that I knew. They're not numbers. They were Mike and John
11:51:48 5 and people that I work with. They did -- Groeneveld said
6 well, if you simply fire 30 people, then we will make \$1
7 million a year more, and that's what we want to. We want to
8 get it out of cutting expenses instead of out of more
9 growth.

11:52:04 10 So what it meant, for example, my bonus formula, my
11 bonus formula was based on growth. So the formula was the
12 actual growth of the company, divided by 15 percent,
13 multiplied by 1.2, multiplied by the profit percentage of
14 the bottom line. So you take a percentage of 15 divided by
11:52:24 15 15, that we want, 1.2 times say 8 percent bottom line, then
16 I would get about 10 percent of the profit that was
17 generated as a bonus for the company.

18 So when they asked me to grow the company by zero, the
19 calculation would be 0 divided by 15 percent equals 0, times
11:52:42 20 1.2 equals zero, and profit might be 10 or 11, or 12
21 percent, times 12 is still zero. So bonus was eliminated.
22 So we tried to talk about that, and I tried to work it out,
23 and I tried to, you know, reason with Mr. Groeneveld and his
24 CFO why I thought that the changes they wanted to make were
11:53:00 25 not good.

Eissis - Direct

1 So we have a good company. You know, we had -- before
2 profit, we -- before tax profit on the books, \$4 and a half
3 million, 33 million in sales and, you know, every month I
4 had a business meeting, and I told people how well we were
5 doing, like things were going good and people were excited
6 to work for us a good time, and all of a sudden, I would
7 have to fire 30 people and say 20 people it was and fire
8 these people and, you know, I thought everybody -- I think
9 the whole search of the company would change. It would
10 change from people wanting to come to work for us, like
11 people would bring the family members over and say can I
12 have a job for us. And I believe at that point, things
13 would change, people would say this is company stable here,
14 and people started looking for jobs.

15 And in my opinion, as it happened as well, however, so
16 this conflict went on and it was another meeting in the
17 beginning of January, and Mr. Groeneveld actually stormed
18 mad out of my office then in Canada. And then I started
19 receiving e-mails that besides no more bonus, my base salary
20 was going to be cut by more than 30. Yeah, it was going to
21 be cut by \$80,000. So it was a huge cut, and my bonus was
22 going to be a maximum of \$30,000, which was like less than a
23 tenth of what I expected in the year before.

24 So for me, the message became clear these people don't
25 want me around. And I consulted a lawyer. And I told them

Eissis - Direct

1 what was happening and he says --

2 Q. Jan, don't disclose any communication between you and
3 your lawyer.

4 A. Okay, sorry. Yeah.

11:54:47 5 Q. But, at this time, you and Groeneveld parted company?

6 A. Yes.

7 Q. Did you steal anything from Groeneveld when you left?

8 A. No, nothing.

9 Q. Did you have a noncompetition agreement with
11:54:58 10 Groeneveld?

11 A. I did from selling the company, and those had expired
12 since. And then there's also something that's called
13 fiduciary obligations I found out. So you have as a
14 president of the company, you have a fiduciary obligation to
11:55:15 15 the company that you can't go into the competition with
16 them. Legal advice on that. And that's how I actually
17 learned. I didn't know that before. That's what happened.
18 So I did have those fiduciary obligations, yes.

19 Q. So what did you do after you and Groeneveld parted
11:55:31 20 company?

21 A. Well, first I went to the gym. I had to lose some
22 weight. And then I sit at home for about ten days with my
23 lovely wife, Linda, and coffee 10:00 in the morning, and I
24 thought I can't do this for the rest of my life, so got to
11:55:49 25 figure out something else to do. So we -- I started looking

Eissis - Direct

1 at other business opportunities and I ended up with starting
2 a company called Orlaco Crane Cam, and that was a camera
3 that installed cranes, installed cameras on the tips of
4 cranes on construction cranes, mobile cranes. And we would
11:56:09 5 look down on the web site -- on a work site so the operator
6 of the crane could actually see what he was doing like, for
7 example, if you have a crane sitting right here, this would
8 be a large building. It would boom up, go over the building
9 and say they have to place an air conditioner so the crane
11:56:25 10 operator here would not know what's going on. They had a --
11 they have a signal man on the side or radio contact. So the
12 guy working blind so the train cameras, they would actually
13 give you a bird's eye view and the operator could see what
14 he was doing, and I thought that was an opportunity because
11:56:44 15 it wasn't really promoted at all any more in North America.
16 So I started doing that.

17 **Q.** So Orlaco Crane Cam was not originally, obviously was
18 not in the business of selling automatic lubrication system?

19 **A.** Not at all.

11:57:02 20 **Q.** Did there come a time when you got reinterested in
21 selling automatic lubrication systems?

22 **A.** Yes, I did.

23 What happened with the crane camera business, what I
24 did not expect, is that it was actually very expensive by
11:57:19 25 business to be involved in because cranes are not as

Eissis - Direct

1 plentiful as trucks so I have to travel to great distances
2 to get my products promoted. So I took my mother home and
3 would drive to Texas and would be on the road there, and I
4 would go to Northern Alberta in Canada and try to find
11:57:33 5 customers. So one of the first big deals we got with
6 cranes, this company was buying new leap air cranes and
7 these cranes were coming from Germany. So I had to spend a
8 lot of time and effort to try to convince the system put it
9 on for awhile. Then they're going to buy 40 new cranes, and
11:57:50 10 the systems were selling for around between 10 and \$15,000.
11 So that was a big deal. It was like a half-million-dollar
12 deal we had in crane cameras, and I could make good money on
13 that.

14 What happened was the manufacturer of the crane
11:58:04 15 cameras, Orlaco from the Netherlands, Henry, he had already
16 arrangement with Leap Air that these cameras could be
17 installed at the factory. So I ended up pretty much losing
18 my deal to the factory because the customer found out about
19 it as well and now this cameras are being installed.

11:58:21 20 So started to realizing that I could give it all my
21 effort, but I wasn't really going to go anywhere because the
22 bigger deals would all be going to the OEM's and Henry
23 couldn't help either because he had already had that deal.
24 He couldn't say to the manufacturer that now he has to sell
11:58:37 25 these camera, you have to buy it from them. Also the

Eissis - Direct

1 manufacturer got the same pricing as I did. So there was no
2 space for me in that.

3 So I, you know, became a little bit discontent for the
4 crane cameras, and I thought like I can't make a living with
11:58:52 5 this. This is not going to happen. So then I ended up
6 going to a trade show in the Netherlands, and that was in
7 2007, end of the year, I went to the show where I met
8 Martin. Looking --

9 **Q.** Excuse me, met Martin who?

11:59:13 10 **A.** Marvin Vermeulen.

11 THE COURT: Mr. Anastos, this would be a good
12 time to break for lunch?

13 MR. ANASTOS: This is fine, your Honor.

14 THE COURT: Okay, folks. We break for lunch.

11:59:21 15 1:15 and we'll meet on L-1. Sound good, Mr. Yarger?

16 A JUROR: Yes, sir.

17 THE COURT: Keep in mind the admonition.

18 (Thereupon, a luncheon recess was had.)

19

20

21

22

23

24

25

Eissis - Direct

1 Wednesday Session, October 20, 2011, at 1:15 P.M.

2 THE COURT: You may continue.

3 MR. ANASTOS: Your Honor, may I approach for
4 two seconds for a side bar?

13:29:55 5 THE COURT: Um-hum.

6 (Discussion at side bar off the record.)

7 THE COURT: Mr. Eissis agreed he was going to
8 speak a little bit slower. Right?

9 THE WITNESS: Yes, yes, your Honor. I will
13:31:18 10 try.

11 BY MR. ANASTOS:

12 Q. Where we left off, I believe, Mr. Eissis, it was fall
13 of 2007 and you were at a trade show in -- where was that?

14 A. That was in Amsterdam.

13:31:28 15 Q. And what happened at that trade show?

16 A. I had a trade show. I visited there mainly to look
17 for opportunities for products that might be marketable in
18 North America. And that one is a trade show booth. I met
19 up a company that was into cabin pressurization systems. At
13:31:51 20 that booth, I met Martin Vermeulen.

21 Q. Had you known Martin Vermeulen beforehand?

22 A. Yes.

23 Q. How long ago had you met him?

24 A. I mean it was 2007, it might have been over ten years
13:32:04 25 ago that I met him for the last time. I remember him from

Eissis - Direct

1 the Groeneveld days. I had regular contact with him, met
2 him, worked with him. He came to Canada.

3 Q. Okay. Did you ask Mr. Vermeulen to do something?

4 A. Yeah, I actually, more or less, came out of
13:32:22 5 conversation, what are you doing right now. And well, I'm
6 kind of looking for different things and doing the crane cam
7 is not working out. Told him that I wasn't really on the
8 greasing system end, didn't really see any opportunities
9 because all the -- all the companies that I would look at,
13:32:40 10 you know, say a Lincoln or Vogel, again the company already
11 had representation in place. So Martin said I can make a
12 pump for you. I said you got to be kidding, and that's how
13 it started.

14 Q. Did you provide Mr. Vermeulen with any plans or
13:32:56 15 drawings?

16 A. No, I did not.

17 Q. Did you provide Mr. Vermeulen with any technical
18 specifications about what you wanted out of your pump?

19 A. Yes, I did.

13:33:06 20 Q. What sense?

21 A. It will be easiest for me to explain if I take one of
22 my pumps here, for example, or both pumps. Actually, if you
23 take -- yeah, just the Lubecore pump, yeah and maybe the
24 Groeneveld pump as well, and I can explain that.

13:33:28 25 MS. ZUJKOWSKI: Sure.

Eissis - Direct

1 Q. Hold on for two seconds. Just so I'm correct, DX-A is
2 the Groeneveld pump, and DX-B is the Lubecore pump?

3 A. Yeah.

4 Q. Okay.

13:33:57 5 A. So when I talk to actually at that show, I didn't
6 really talk to him about any certification, I should say
7 that.

8 MS. MICHELSON: I didn't understand the
9 testimony.

13:34:11 10 THE WITNESS: At the trade show, we did not
11 really talk about any specifications.

12 Q. When did you meet him next?

13 A. I went to Korea.

14 Q. How long?

13:34:19 15 A. He asked me to come to Korea and told me he could make
16 a pump for me and he invited me to come and see the factory
17 he was working with or worked for. And I took him up on
18 that and I visited to Korea.

19 Q. How long were you there?

13:34:35 20 A. A few days. It was one week.

21 Q. Within one week, did you say?

22 A. Yeah.

23 Q. Okay.

24 Now, back to I asked you about did you convey to
13:34:45 25 Mr. Vermeulen any technical specifications that you --

Eissis - Direct

1 **A.** Yeah.

2 **Q.** -- interested in?

3 **A.** Like what I learned from working with the -- this pump
4 here that I was selling when I was with Groeneveld, even
13:34:55 5 though it is a good pump, still lots of issues in it as
6 well, and some of the issues that we had, for example, is
7 that this -- this -- this cavity in the back of the pump
8 here would fill up with dirt, and then it would get cold as
9 well, and it would freeze and get cold and actually these
13:35:18 10 pumps would break. Corrosion would start taking place from
11 behind in the pump. The bolts would be seized into the pump
12 housing, and then actually the pump was some things fall off
13 the truck, and we had a lot of that on the south freight
14 trucks for example. And I said if you're going to make a
13:35:33 15 pump for me, I don't want it to fall off the truck.

16 Another issue we had is this follower plate. The
17 follower plate is this black rubber follower plate. Quite
18 often, the grease would leak and go to the top of the
19 follower plate. So then the follower plate would slow --
13:35:47 20 slowly go to the bottom and sitting right here and the
21 grease would be all on top.

22 So then the pump would run empty underneath the
23 follower plate. So I said to Martin if you make me a pump,
24 I don't want that to happen because that's an issue that I
13:35:59 25 used to know from the past.

Eissis - Direct

1 Then inside this pump here, there's a hole in the side
2 as you can see that. That's an overflow if you overfill it.
3 If you look in the top of this guide rod, there's a little
4 hole. This guide rod is hole, and then the -- if you
13:36:16 5 overfill it, the guide rod passes the hole. The grease goes
6 through and comes out that hole.

7 Now, the way these pumps are mounted, the grease would
8 run out of that hole, and it would then dribble long these
9 lines here and would hang on the solder rod. So you get
13:36:31 10 regular service calls people say the solder rod is leaking
11 grease, can you come and fix that, even though just an
12 external leak. So I said in my pump, I would want a vent
13 hole up there. I would want the vent hole in a different
14 spot so that would not happen.

13:36:45 15 We had this little ID plate that you see here. Like
16 if you talked about warranty before and Groeneveld said it
17 didn't have much of a warranty. One of the big issues we
18 had with this pump is ID plate in Canada, I would literally
19 but off the truck, off the pump because it's aluminum within
13:37:03 20 a year or two. So if people would come to us with warranty,
21 we couldn't read the number anymore, couldn't see what year
22 the pump was made because that information is all on this
23 plate.

24 So I said I want one pump, stainless steel ID plate so
13:37:19 25 that if there's a warranty issue, we can actually recognize

Eissis - Direct

1 the pump, and I would want that changed.

2 The guide rod, that's a ground piece in the middle
3 there. We used to have issues that because on the roads,
4 corrosion for materials right now to keep the roads free of
13:37:35 5 ice. We would get water on top of that follower plate and
6 another time it had those chemicals in it. Then we would
7 get corrosion on that guide rod and the follower plate would
8 hang up. So I said if I want to have a pump made for
9 myself, I wouldn't want to have that to happen. And same
13:37:51 10 thing that follower plate on top there, looks like corroding
11 as well the rod sitting on top. I said if I want to have my
12 own pump, I don't want that to happen.

13 So I went over this pump and, you know, it's about,
14 you know, like these are some of the things that I mentioned
13:38:05 15 to Martin. That was the kind of instructions that I gave
16 him. That's what I was looking for. So when you now look
17 at these pumps, you can see that they have -- it's a
18 different guide rod. The corrosion issue, what I did there,
19 what Martin did is we put little bushings so that housing is
13:38:29 20 actually even more different than you think.

21 See how that hole is a lot bigger now? That one
22 there. So we had to actually put little bushings in there,
23 and this is a nylon bushing. So now the steel bolt is going
24 through a nylon bushing and would not touch the aluminum.
13:38:49 25 And that was an issue that we had. I showed that pump was

Eissis - Direct

1 actually the rod was in there. So I said those are the kind
2 of things I'm looking for in my own pump and that was the
3 type of instruction that I give Martin.

4 Q. Okay.

13:39:00 5 Did you tell Mr. Vermeulen that you wanted your pump
6 to look like the Groeneveld pump?

7 A. I did not.

8 Q. Did you want your pump to look like the Groeneveld
9 pump?

13:39:09 10 A. It didn't really matter. That was not the purpose of
11 it.

12 Q. Why didn't it matter to you?

13 A. I want a pump that pumps grease, that lasts on the
14 truck. I don't believe that my customers care about what
15 the pump looks like. We have many different kinds of pumps
16 now. And as long as it pumped grease and the truck is
17 getting greased and we sold the issues that the customer
18 has, that's what it's about.

19 Q. What did Mr. Vermeulen ultimately deliver to you?

13:39:41 20 A. Excuse me?

21 Q. What did Mr. Vermeulen ultimately provide you with?

22 A. This pump.

23 Q. And that is marked DX-B, correct?

24 A. DX-B, correct.

13:39:57 25 Q. What size is the reservoir on that pump?

Eissis - Direct

1 **A.** It's about six kilograms or six liters.

2 **Q.** Do you know why the reservoir is the size that it is?

3 **A.** Yeah, it's -- it depends on the number of grease pumps
4 you have on the truck and how often that truck normally
13:40:16 5 comes in for service. Typically, what fleets like to do is
6 run the trucks from oil change to oil change because the oil
7 change is something that I have to do anyway.

8 Greasing, quite often they have to go in between, so
9 if they have to bring it in anyway. For example, at 40,000
13:40:34 10 miles, they would like the grease reservoir to last 40,000
11 miles, so that it do not have to take the truck off the
12 road, just for the purpose of filling up that grease system.
13 So the size of those reservoirs is really determined by the
14 number of grease points and how long the trucks typically
13:40:49 15 stay out with the fleets.

16 **Q.** So what's marked as DX-BB?

17 **A.** Okay.

18 **Q.** Different version of your pump, can you identify that?

19 **A.** Yeah. This pump here is a smaller reservoir. It's
13:41:10 20 about a four-kilogram or say nine-pound reservoir. And this
21 could, for example, go on a municipal truck, municipality on
22 a snow plow, these trucks are back in the yard everyday, I
23 mean they're being parked overnight from where they go from,
24 typically in the garage being serviced.

13:41:28 25 So, that's why this reservoir has a different size.

Eissis - Direct

1 Just applied in those kind of applications.

2 Q. It's easier for you to work with the smaller one up
3 there than the bigger one?

4 A. Excuse me?

13:41:42 5 Q. Easier to work with the smaller one up there?

6 A. Sometimes from a space perspective.

7 Q. I mean --

8 A. Oh, yeah that's fine. That's fine, yeah.

9 Q. Now, can you please describe -- you've given some of
13:42:05 10 this, but what I want to understand is the physical
11 differences between your pump and the Groeneveld pump and
12 the visual differences between your pump and the Groeneveld
13 pump.

14 A. Can you please repeat that?

13:42:17 15 Q. Sure.

16 Can you describe the visual differences between your
17 pump and the Groeneveld pump?

18 A. Yeah. Okay. First of all, when you look at the top
19 of my pump there, right on the lid, on the lid here it says
13:42:29 20 no step, and in the lid is also my Lubecore logo. And by
21 looking at this pump, this pump here has a stainless steel
22 follower plate inside so it's shiny, the guide rod is black,
23 first chrome on the one from Groeneveld. The follower plate
24 j here is made out of that, and this is a red silicon rubber
13:42:53 25 that is a different rubber than what Groeneveld was using,

Eissis - Direct

1 and we have not had one sink through the bottom of the
2 reservoir yet. The reservoir glass is made out of a
3 material that is called Microlon and like Martin explained
4 to me, it comes from head lights of new vehicles, and this
13:43:10 5 is a material that stays crystal clear, and it's also break
6 proof. If you, for example, look at the Lincoln pump that
7 sits on the table there, that reservoir is all yellow and
8 you can't really see through the plastic anymore because
9 it's getting older. So what happens then is that a customer
13:43:25 10 cannot really see grease level. And we had similar issues
11 with the one in the 1990s as well. So the Microlon really
12 excited me. It would stay clear and we have not broken one
13 yet. This is actually break proof. Stones can hit it and
14 it will not go through.

13:43:41 15 Then there is the logo on the pump like we have on all
16 our pumps come out with this logo, Lubecore name, and we
17 don't call it a single-line system. I call it an automated
18 lubrication system. Then this on the housing itself is a
19 number of changes as well. Here is the red cap; again,
13:44:04 20 associated with the color of Lubecore. Then the housing
21 here has been changed as well. And we had another --
22 actually, it might seem like little thing but a practical
23 issue in the field with pumps I worked on that when I was
24 with Groeneveld. Like inside with Groeneveld there, could I
13:44:22 25 maybe see that pump, Melissa, or somebody?

Eissis - Direct

1 MS. ZUJKOWSKI: Which one?

2 THE WITNESS: The one on the ground there.

3 Thank you.

4 When you look at this -- this fitting here, this is --
13:44:43 5 this hole goes straight in the bottom of that pump. If you
6 have to take this fitting out, like what's inside of here is
7 a little filter, and the filter prevents -- you're filling
8 the grease system with hand pump or anything. There's a
9 filter in there supposed to keep the grease clean before it
13:44:59 10 goes inside the pump. This fitting here, if you look at the
11 size of that -- that little glass piece there, that's
12 actually a 5/16 wrench size. And this fitting here has a
13 about a three quarter of an inch, three quarters of an inch
14 thread inside the housing. So this fitting would corrode so
13:45:20 15 tight in there, you couldn't get it out. So I would have my
16 little 5/16 wrench in the field. The filter is clogged,
17 can't fill the pump anymore, and I'm literally fighting with
18 these things to try to get them out. That was the -- it's
19 just a nasty thing to have to do.

13:45:34 20 So this was one of the things I asked Martin as well.
21 I don't want that in the pump that I would have. So what we
22 did then is changed the housing so that the function that
23 really of this change in the housing here is that now the
24 fitting goes in straight, and I can put like a 9/16 socket
13:45:49 25 on there with a ratchet wrench, crank out to get at filter.

Eissis - Direct

1 So then the rest of the -- the bushings and the
2 housing that can be popped out, as I just demonstrated
3 before. Also if you look at the housing here, those
4 housings are different down there as well. I guess on here
13:46:12 5 little bubbles out of it, little holes go out of it. And
6 the one that we have here is flat. If I look at that side
7 of the housing here, that's shaped differently as well.
8 Then also in the bottom of the housing, it clearly has my
9 Lubecore logo here so that people can see it's a Lubecore
13:46:28 10 housing and not a somebody else's housing.

11 So then the overflow hole is now mounted on this side
12 here. And also what I asked him to do is put a thread in
13 there. So here's the overflow on this one, and on this
14 particular pump, it's on the opposite side.

13:46:48 15 So the issue that we had is the grease was running
16 over the hoses so what we did is put it a bit lower and put
17 a thread in there. So now I can put a fitting in and run my
18 hose to a spot where it is no dirt running over the pump and
19 so on. And these are all practical things that I learned
13:47:05 20 from being in the business that make a difference to the
21 customers. And these are the kind of things we promote when
22 we're out, like being well thought of. I think I caught
23 most of them.

24 **Q.** Let me ask you this. Can you, aside from -- besides
13:47:20 25 from the visual differences, are there performance

Eissis - Direct

1 differences between your pump and the Groeneveld pump?

2 **A.** Well, I hope so. We only in the business really for,
3 you know, three years right now. Right? So I think that
4 the changes that we have made, it's going to have to show up
13:47:37 5 over time how it all works out, but I believe that, I fully
6 expect that stainless steel plate is not going to corrode
7 the rod, ain't going to rust. We already have lots of
8 evidence that the pump is not filling up in the back. And
9 actually I should -- there's a gasket in one of these pumps.
13:47:54 10 Can I grab it for a minute? Can I go there?

11 THE COURT: Sure.

12 THE WITNESS: Okay. So another thing that we
13 ran into a lot is that the back of this pump fall off dirt.

14 **Q.** Mr. Eissis, what exhibit can you say this pump?

13:48:57 15 **A.** This Exhibit is DX-Y, but it looks a lot the same as
16 to one of the other ones here. The back of it looks the
17 same of these two pumps.

18 MS. MICHELSON: Can you identify the other one
19 for the record?

13:49:14 20 THE WITNESS: That would be DX-A.

21 So this kind of material behind here would cause a
22 problem. Corrosion would set in behind that pump. So
23 what -- what I did is I created or had Martin create a foam
24 casket that fits into this in the back. So now we have the
13:49:35 25 nylon bushings, and on top I would have a nylon washer

Eissis - Direct

1 before the bolt goes through. So now a totally insulated
2 mounting system. So then I bolt aluminum to steel, no dirt
3 gets behind. I take these pumps off after three years,
4 clean like new in the back. So that's another important
13:49:56 5 improvement that we made.

6 Q. Did there come a point in time where you changed the
7 name of Orlaco Crane to something else?

8 A. Yes, I did.

9 Q. And when was that, do you recall?

13:50:08 10 A. Well, I don't know the date.

11 Q. What did you change the name to?

12 A. We changed it to Lubecore International.

13 Q. And is that about the time that you got back into the
14 ALS business?

13:50:22 15 A. Yeah. Actually a bit later. First we did, we came in
16 the trade show in Toronto in 2008, we introduced the pump.
17 And first I -- we had Orlaco Crane Cam. Business card would
18 say Lubecore, division of Orlaco Crane Cam. And a few
19 months later, I think July in the summer, later in the
13:50:45 20 summer, then I made a deal that Mr. Vermeulen come, that he
21 actually move into Canada with his own company, and he took
22 over the Orlaco Crane Camera business, took over my
23 inventory. I made a deal with him, both of us are
24 satisfactory. And then I changed the name because I was no
13:51:04 25 longer into the Crane Cam. I changed the name to Lubecore,

Eissis - Direct

1 Lubecore International, I believe it is.

2 Q. When was the Canadian truck show, you remember?

3 A. April 2008.

4 Q. By the time you got back into the automatic
13:51:29 5 lubrication system, had your -- had the fiduciary duties you
6 described with respect to competing with Groeneveld expired?

7 A. Yes.

8 Q. Who owns Lubecore?

9 A. Basically me and my family, me and my wife and
13:51:46 10 actually -- well, another -- I think it's a holding company
11 altogether.

12 Q. So essential through a holding company or directly,
13 it's a f-a-m-i-l-y run business?

14 A. It is, yeah.

13:51:55 15 Q. How many employees does Lubecore currently have?

16 A. Current ly, we have about 12 on hiring, so.

17 Q. When did you make your first sales of Lubecore pumps
18 in the United States?

19 A. That was in 2009. It was with Tim Anthony, I think
13:52:22 20 All Points Lubrication.

21 Q. You remember approximately when that was?

22 A. I think it was earlier in 2009. I don't know the
23 date.

24 Q. The -- there's been a lot of talk about recalls and
13:52:39 25 pictures of pumps leaking, et cetera?

Eissis - Direct

1 **A.** Yeah.

2 **Q.** Did the first pumps you sold in Canada and the U.S.
3 perform flawlessly?

4 **A.** No, they did not.

13:52:49 5 **Q.** Why not?

6 **A.** Well, even though we thought -- I thought that it was
7 all so much better, we also mistakes made in the pump.

8 **Q.** What kind of mistakes?

9 **A.** One thing I can explain to you.

13:53:26 10 Actually, inside this pump is a -- is a grease chamber
11 that's -- this chamber here. And here's the grease piston.
12 So when the air goes underneath this piston, it fits into
13 this chamber here, and the air pressure forces that up, and
14 the grease pumps out of there. And then it goes down, it
13:53:50 15 sucks the grease back in. There's one-check valve on top
16 and up and down she goes. This only happens every hour and
17 a half.

18 On the pump that we designed, Martin pretty much
19 decided to go with a quad ring. One of the things I told
13:54:09 20 him is that an O-ring like this, with the back of ring, if
21 you push these into the pump, sometimes that would happen,
22 this little white ring would go over, would come out of the
23 groove and like I say like that, and it would create a leak
24 and it's -- actually very common, but happened often enough
13:54:29 25 that it was an annoyance. So then Martin go to Japanese

Eissis - Direct

1 company and says this has a quad rod ring. You can see it's
2 got a little dimple in it.

3 Q. Could you explain what a quad ring is?

4 A. Yeah, actually I could draw it up there if you want.

13:54:45 5 Q. Sure.

6 A. Okay. I got a pen here. The top of the piston
7 essentially looks like this, and here's the air piston that
8 goes in the pump. If when you have an O-ring, the O-ring
9 sits right in here, and it has that -- the back of the ring
13:55:31 10 underneath there. The quad ring, the way it works, it looks
11 more like this, like that. That's why we call it a quad
12 ring. So it's in the round and you can use it on the back
13 of the ring. They use a lot in double working cylinders and
14 you know, I was -- I was recommended that would be a good
13:55:51 15 idea. What ended up happening between these one and the
16 mistake was made, and we had to go through side like this,
17 and it became an issue. So when you look at what actually
18 needed to be done is we had to -- we had to replace this --
19 we had to replace this O-ring, put an O-ring inside that,
13:56:13 20 instead of that quad ring. So what it means you have to do
21 you have to take the four bolts out of the bottom of this
22 pump, and then this piston pops out, this little screw in
23 the bottom there, put another head on it, and get it back
24 out. So a lot of our customers did that themselves. They
13:56:35 25 said no problem. Yeah, we can do that. They were not all

Eissis - Direct

1 leaking, but percentage was too high to let it go. So
2 Martin recommended a recall, and that's essentially what we
3 had happening. So if somebody didn't want to go through the
4 trouble of taking the pump apart, you would ask them to send
13:56:50 5 you another pump, swab it out and send the old one back.
6 Clean it up, put an O-ring in and made it work pretty much.
7 I would say hopefully right now we caught them all. The
8 difficulty is that trucks out on the road, you want to fix
9 that, and the first ones you do it quick the last ones are
13:57:10 10 kind of hard to get. That's what happened. So it might
11 still be some out there that have that in it. Also metal
12 leaks did fine, so.

13 **Q.** I've handed you what's been marked as EE, Defense EE.
14 Could you identify that, please?

13:57:39 15 **A.** Yeah. That's an O-ring that's in there right now
16 instead of a quad ring.

17 **Q.** O-ring given to people to replace or replaced by
18 Lubecore or one of its distributors?

19 **A.** This is actually the new O-ring we put on there now.
13:57:52 20 The bad one is actually on this piston here, you want to --

21 **Q.** That's okay.

22 **A.** Okay.

23 **Q.** Were there any other leakage issues?

24 **A.** Yeah, we had solder rod. We had a problem with, it
13:58:05 25 was a solder rod we bought from MAC in the United States,

Eissis - Direct

1 and the solder rod works flawlessly. We were sold on the
2 fact it was a pilot style solder rod instead of a spool
3 valve and it sounded like a real good explanation. So we
4 went for that solder rod and to give you an idea, the solder
13:58:26 5 rod is actually mounted underneath the pump, so it's not
6 part of the pump. It is actually an item that we buy at the
7 market, and we mount that right in the bottom of the pump,
8 so that the air from the system to go through.

9 That solder rod had corrosion issues, and essentially
13:58:44 10 started to falling apart on us after about a year of use.
11 And all of a sudden, we had a batch almost failed
12 immediately. So we ended up going to a German solder rod,
13 and that's working a lot better. We have not -- we have not
14 seen the issues with that solder rod right now. Also had
13:59:02 15 some issues with the reservoir glass, on the bottom leaking.
16 So the grease coming over the edge, and that was kind of an
17 interesting one because we -- I first thought it had to do
18 with tension, the length of the guide rod and the follower
19 plate but found out what was happening is when the pumps
13:59:21 20 were being put together by the people that work at Tae Sung,
21 when they put the reservoir glass on, sometimes the large
22 holding in the bottom would be lying on the edge, and they
23 would notice that when they put the glass on, it was caught
24 in between there. But, what they would do is loosen it up,
13:59:37 25 put O-ring in the groove and put it back on.

Eissis - Direct

1 And what you actually see then is if you take it
2 apart, again if you carefully look at the O-ring, they're
3 kind of knit and kind of act like indentation inside them.
4 And I think that was actually the main -- the main reason
13:59:51 5 for it instead of the tension of the reservoir. Earlier on,
6 I testified it was the tension, that's what we thought.
7 Really that was actually what seemed to have -- an assembly
8 issue seem to have most of the problem.

9 Q. So as far as you know, have all the performance issues
14:00:07 10 with the pump been addressed?

11 A. Pardon?

12 Q. As far as you know, have all of the performance issues
13 of the pump been addressed?

14 A. As far as I know, they are, and if there's another
14:00:15 15 one, we'll address it tomorrow.

16 Q. Now, let's talk a little bit about pumps. Change
17 gears here a little bit, so to speak. You want us to keep
18 those up there?

19 A. It doesn't matter. I can put them -- you want me to
14:00:40 20 put them on the ground here?

21 Q. Sure.

22 A. Okay.

23 Q. There's been testimony in this case of different kinds
24 of pumps?

14:00:54 25 A. Yeah.

Eissis - Direct

1 Q. Correct?

2 A. Yes.

3 Q. Now, can we switch to the -- showing you what's been
4 marked as DX-CC, you see that?

14:01:19 5 A. Yes.

6 Q. Now, the pictures on this page are of what kind of
7 pump?

8 A. What I see here is a Groeneveld pump, Lubecore pump,
9 and a Ecostar pump, and you could add to that family also
14:01:32 10 Bijur pump if you wanted.

11 Q. What did you mean by family?

12 A. Well, any one of those pumps is essentially an air
13 operated single stroke piston pump. Like this -- like all
14 these pumps have this piston inside of them. That style, it
14:01:50 15 goes up once. There's a spring above it. The air falls
16 away. It comes down. And that is the pump action. So all
17 these pumps you'll see a round cylinder underneath a
18 reservoir and the piston is pushed up in air and pushed down
19 by a spring that's the same style you see in the Eco-Star
14:02:09 20 Bijur, Lubecore, and the Groeneveld.

21 Q. Are you familiar with Grease Jockey?

22 A. Yes, yeah.

23 Q. Does the Grease Jockey pump have a piston?

24 A. No, actually the Grease Jockey pump has instead of a
14:02:21 25 piston, it has a diaphragm in the bottom. You look at the

Eissis - Direct

1 black pump. You've seen it often enough, but it has a
2 diaphragm in the bottom, and it works more or less like a
3 brake cylinder of a truck. There's that one side and the
4 diaphragm moves up. Instead of a piston, it's a diaphragm.

14:02:36 5 So you see in the Grease Jockey housing that the
6 aluminum is kind of shaped around that diaphragm, where in
7 these pumps, the aluminum is shaped around this piston. So
8 the operating principal pretty much decides what the pump is
9 going to look like after you're done with it. On the Grease
14:02:53 10 Jockey, you can clearly see if you want to, I could explain
11 that in a little sketch if you want. See on the bottom how
12 the housing there is flat and what it does?

13 Q. Do you want meet to put it up there?

14 A. That's fine, yeah.

14:03:16 15 Q. This is -- what's the Exhibit Number on that?

16 A. This is the DX-132.

17 Q. I don't think it stands up.

18 A. Okay. That's fine.

19 Q. So you can see this is -- doesn't have a piston that
14:03:30 20 goes inside there.

21 So this one has, it has on the bottom. So you have
22 the shape like this?

23 MS. MICHELSON: I'm going to renew my
24 objection, your Honor.

14:03:45 25 THE COURT: Overruled.

Eissis - Direct

1 THE WITNESS: What's inside here is a grease
2 piston, and there's a diaphragm that lies on the bottom, and
3 there's a -- it's the connection little steel plate here,
4 little steel plate there, hold it together, hold it in
14:04:01 5 between there. So now we put air in here, this diaphragm
6 forms and stands like that, that's what creates a stroke.
7 So the housing of the pump essentially is shaped around this
8 diaphragm stroke it has to make, so that the functionality
9 of how the pump works, determines really what the pump looks
14:04:21 10 like, and you have piston stroke here, piston pump, we have
11 a piston like this one here, and a smaller piston, with so
12 the aluminum housing here is shaped really around the
13 piston. But, what the pump looks like is determined by the
14 round piston inside and the room around that. And that's
14:04:46 15 what -- that's why that family of pumps all look very
16 similar, the single stroke pumps look very similar, except
17 for the color.

18 Q. Let me put up another picture. The second page of
19 DX-CC?

14:05:07 20 A. Yeah.

21 Q. Do you recognize these pumps?

22 A. Yes, I do.

23 Q. What family do they belong to?

24 A. They belong to the family of electric piston pumps,
14:05:18 25 and the principle of that pump is it has pretty much like a

Eissis - Direct

1 windshield wiper motor in the bottom that lies there and
2 windshield wiper motor is really a cam and that cam has
3 pistons coming out of the side. If you see on the left side
4 of the bottom one there, does it do magic? There -- yeah.
14:05:38 5 There's a pump element there. And the pump element hits a
6 cam, and as this cam turns from the windshield wiper motor,
7 goes in and out, in and out, and that's the piston, electric
8 piston pump, but little pistons inside that you can lay
9 against it from the side. So all these pumps look the same
14:05:57 10 really if you look at the housing, they all have holes on
11 the side. If you can give me the Lincoln pump there, Tom, I
12 can demonstrate that if you want. On the table there. Yes.

13 **Q.** What's the Exhibit Number?

14 **A.** Exhibit PX-131. So you see in the bottom, the
14:06:28 15 windshield wiper motor, yeah.

16 And you have on the side a pump element, and these
17 pump elements won't come out, but you can put it in three
18 different spots. So each one of the pumps, where you have
19 the Bijur or a Ciaponi or Lincoln or Vogel have those three
14:06:48 20 holes, put the pump element, and this might be a little bit
21 different. But, essentially it's the same principle, same
22 family of pumps. So when I'm comparing pumps, I compare
23 piston pumps with piston pumps hand operated, and this would
24 be to me electrically operated pump, and believe me, they
14:07:06 25 all look the same inside.

Eissis - Direct

1 Q. Let's look at one more, Page 3 of DX-CC.

2 A. Yeah.

3 Q. What family do those pumps belong to?

14:07:27 4 A. That's the family of electric gear pumps. So the pump
5 that I've shown earlier was the by the other people there
6 where they compare to the Lubecore pump, was a Vogel pump
7 the one you see the top left there, Vogel, SKF Vogel.
8 Besides that, I think that's a Fire Fall and the one below
9 might be a Bijur or something. I don't know exactly. But,
14:07:47 10 again, what you see there, it's another operating principle.
11 You see a black cover on the top. Quite often it has the
12 timer in it or something. Then you have the reservoir glass
13 on the bottom instead of on the top.

14 So now, there's a little pump, a gear pump that hangs
14:08:02 15 in the bottom of the reservoir glass. The motor is running
16 and it sucks to grease out from the bottom, usually thin
17 grease quite often for oil or light greases. So Vogel sells
18 those on trucks. I brought another one actually, on the
19 table there beside the table. And that's one that -- the
14:08:23 20 black one, Tom, yeah. Watch, make sure the lid doesn't come
21 off.

22 Q. Full of grease?

23 A. Full of grease, yeah. See that's another electric
24 gear pump, and I don't even know what make this, to be
14:08:37 25 honest with you. Literally tens of them, different kinds,

Eissis - Direct

1 no name on it. If you take the lid off, can't find a name
2 either, but this is different than a Vogel, but exactly the
3 pattern is the same as a Vogel. So somebody made this pump.
4 So you can stick it in the place of a Vogel.

14:08:53 5 But, this pump works totally different than an
6 air-operated piston pump. It's not the same family. It's
7 like comparing apple to a crocodile.

8 **Q.** Okay. Mr. Eissis. Let's talk about how you
9 differentiate your Lubecore brand from the rest of the
14:09:40 10 marketplace?

11 **A.** Try to do that by everything that we send out have a
12 Lubecore logo on there, use of the red colors, whether it is
13 a, you know, spider pump that we have or electric piston
14 pump as well, like everything that we do, we try as much as
14:09:57 15 possible get our red colors incorporated, the Lubecore trade
16 dress logo that we have, and go out there and the preach the
17 Lubecore belief.

18 **Q.** Showing you what's been marked as Plaintiff's Exhibit
19 66?

14:10:20 20 **A.** Yep.

21 **Q.** What elements of the Lubecore brand are you trying to
22 display here?

23 **A.** Well, we try to display here the red color, the
24 next -- slogan, next generation automated lubrication, try
14:10:36 25 to display on the top there our logo. On the pumps there we

Eissis - Direct

1 try to, you know, make a connection between the Lubecore
2 pump and the logo in the red. I think on the bottom it says
3 something else there, Tom. No, I guess not.

14:11:04

4 **Q.** What Lubecore identifiers appear on the back page of
5 this sales literature?

14:11:19

6 **A.** Well, I would say the Lubecore name comes up, Lubecore
7 in the environment safety, the Lubecore automatic
8 lubrication system, Lubecore turn piece solutions, contact
9 us today, Lubecore, Ontario, I think it's all about
10 Lubecore.

11 **Q.** Do you want your product to be associated in any way
12 with Groeneveld?

13 **A.** Absolutely not.

14 **Q.** Why not?

14:11:24

15 **A.** Because I want people to come to me instead of
16 Groeneveld.

17 **Q.** You want your product to be associated in any way with
18 that of any of your competitors?

19 **A.** No.

14:11:36

20 **Q.** Why not?

21 **A.** I certainly haven't -- go to the sales call certainly
22 don't talk about any competitor unless we have to, unless we
23 have to compare.

24 **Q.** This is Plaintiff's Exhibit 62?

14:12:04

25 **A.** Can you return turn that, Tom.

Eissis - Direct

1 Q. Sure. Can you tell us what this is?

2 A. That's a logo, says Lubecore next generation automated
3 lubrication for further information, please call Jan
4 Jonathan or Steve and our address. Probably a sign that's
14:12:23 5 used in a trade show booth. How big is that thing in real
6 life? Pardon?

7 Q. To me only eight and a half by eleven?

8 A. Yeah, probably a photo or something bigger, design of
9 a trade show booth sign, yeah.

14:12:51 10 Q. Showing you what's been marked as DX-K.

11 A. Okay.

12 Q. What is this?

13 A. Well, that's a general manual, general manual of
14 Lubecore system.

14:13:06 15 Q. And are the Lubecore markings on your general manual?

16 A. Yes, on the top page, you see maple leaf logo with a
17 drip is on the pump there, Lubecore is prominently displayed
18 there.

19 Q. Why did you go with red?

14:13:20 20 A. I like red.

21 Q. And your logo, is that registered?

22 A. Yes, that's -- the registered trademark.

23 Q. I'm showing you -- why don't we clear that green
24 again. Anybody remember?

14:14:15 25 Showing you what's been marked as Defendant's Exhibit

Eissis - Direct

1 L, do you recognize this document?

2 **A.** Yeah, I do.

3 **Q.** What is it?

14:14:26

4 **A.** It's what I call a fax benefit analysis, a sales tool
5 that we made and provide to people that need it.

6 **Q.** And who is -- what comparison is being made in this
7 particular fact benefit analysis?

14:14:41

8 **A.** In this case, we are comparing Lubecore with
9 Groeneveld. So what we do is say what the component is,
10 Groeneveld facts, the Lubecore facts, and then the benefit
11 for our customer of the Lubecore fact, what a benefit means
12 to the customer.

13 **Q.** Why are you doing this?

14:14:55

14 **A.** To show -- it's a sales tool to help people to
15 understand, for example, follower plate color, black or
16 bright red. So the deadline created by the seal clearly
17 indicates the grease level from a distance. Fewer
18 reservoir, low maintenance and operating costs. You can see
19 the red better than black we say.

14:15:16

20 **Q.** Okay?

21 **A.** See the follower plate seal. Rubber silicon, silicon
22 for Lubecore, rubber for Groeneveld. Silicon maintains
23 pliable and extreme weather conditions, few leaks and low
24 maintenance and operating costs. Basically not negative
14:15:31 25 about anybody else, but what's good about what we -- what we

Eissis - Direct

1 have in our pump.

2 Q. Do you do these kind of fact benefit analysis only
3 with Groeneveld?

4 A. No.

14:15:52 5 Q. Showing you what's been marked Defendant's Exhibit DD.

6 A. Okay. That's one between Lubecore and Ecostar, same
7 deal.

8 Q. Lubecore facts and the Ecostar facts?

9 A. Yeah.

14:16:05 10 Q. Paging into the third page?

11 A. Lubecore Groeneveld, that's a Groeneveld Lubecore
12 again.

13 Q. All right.

14 A. Another page of it, I think. I think we got 22
14:16:22 15 differences on that page.

16 Q. Who's this one?

17 A. That's one -- that's one between Bijur and Lubecore.
18 Another page of the same document, Bijur and Lubecore. And
19 that's one between Grease Jockey and Lubecore. Actually if
14:16:49 20 you put that back up, Tom.

21 Q. Sure.

22 A. See I just -- I just took a -- Grease Jockey. Yeah.
23 I see the first thing is that actually between Groeneveld
24 and Grease Jockey and Lubecore, all three. So we say we
14:17:04 25 have a clear reservoir would apply the silicone. So

Eissis - Direct

1 comparing two others to us. This could be for customer that
2 was looking at both Grease Jockey and Groeneveld. And we
3 tried to bring our product in the picture.

14:17:33 4 **Q.** There's been some testimony in talking in this case
5 about interchangeability. I'd like to discuss that with
6 you.

7 **A.** Yeah.

8 **Q.** Is your pump interchangeable with the Groeneveld pump?

9 **A.** Yes.

14:17:45 10 **Q.** How so?

11 **A.** Well, if you -- actually interchangeable with
12 Groeneveld, Ecostar, Bijur, and Grease Jockey. For example,
13 if you would take that Grease Jockey pump that's sliding on
14 the front of the table there because we now know how all
14:18:02 15 these pumps work. Essentially what this pump needs, it
16 needs air in the bottom. There's a grease line coming out
17 of it here, and you need to mount it to the frame. So it's
18 three things that we need to do. An electrical wire. So
19 all the pumps, whether a Grease Jockey, a Bijur, Groeneveld
14:18:20 20 or ours, you have solder rod to be positive and negative,
21 plus minus to make it work to open up for air, the grease
22 line that comes out the side, an airline that goes into the
23 bottom, and you have to bolt it to the frame. So if I take
24 that location there that the Grease Jockey pump is mounted
14:18:38 25 in, or the Groeneveld or other, and I take the bolts out,

Eissis - Direct

1 the bolt hole in the frame will fit this. And Grease Jockey
2 can do that to me, I can do it to Groeneveld, I can do it to
3 Ecostar, we can do it to each other. So if I have to fix
4 somebody's lubrication and there's a defect with a pump, I
14:18:56 5 can stick the old pump in there, hook up the air supply,
6 hook up their main line, hook up the electrical wires, and
7 it works and will lubricate the Grease Jockey system, the
8 Bijur system, the Ecostar system.

9 **Q.** Are the internal organ parts of the pump -- of the
14:19:14 10 pump mechanism in your pump interchangeable with a
11 Groeneveld pump mechanism?

12 **A.** No, it's a little more tricky. I think you guys heard
13 of -- Martin got into that as well, but I brought an example
14 here.

14:19:25 15 If you look at these pistons here, and this piston
16 here, this is actually a piston out of the Groeneveld pump.
17 You see how the O-ring on this piston is different, and you
18 see this pump has a wide O-ring so I cannot put that O-ring
19 on a Groeneveld piston. I also cannot take this Groeneveld
14:19:52 20 piston and stick it in my Lubecore cylinder. It does not
21 work.

22 What I could do if I have to replace a seal, I could
23 make a little kit. I say okay, I'm selling you a piston and
24 I am sealing you the chamber. I put this together as a kit,
14:20:08 25 and that again will screw in the Groeneveld pump, and this

Eissis - Direct

1 will fit in the Groeneveld housing. So instead of selling
2 you an O-ring, I would have to sell you this assembly to
3 make it work. So everything is different, but still if you
4 group a little group of parts, you can make it work. How
14:20:24 5 often does that stuff happen? Very seldom. Most of the
6 compatibility in a product lies in things like lines,
7 fittings, solder rod underneath the pump, like the
8 consumable items on the grease system are not things inside
9 that pump. They lie in grease last for a long time. The
14:20:43 10 consumable items are broken line, brass fittings, tubing,
11 harness mounted to, timer that function with water in it.
12 That's the stuff you replace in the field.

13 **Q.** So those kind of consumable items, are those
14 interchangeable between the Groeneveld and the Ecostar and
14:21:01 15 your pump?

16 **A.** Yeah, actually, got a little handy there in Italy and
17 that's -- that's on the secondary lining. It's kind of
18 interesting like the secondary lining that we use is five
19 millimeters and competitors use 3/16th's. So 3/16th's is
14:21:21 20 actually 4.76 millimeters, slightly smaller than five
21 millimeter. So if I take brass fittings, and I have a
22 3/16th line, it will fit in the five mill fitting and if I
23 crank the nut a couple more times, I got a perfect seal. No
24 issue.

14:21:36 25 The other doesn't work. If you have a Groeneveld

Eissis - Direct

1 fitting and you want to stick a five line in, it won't fit.
2 So that only works one way, that way. It helps our part
3 seal as well actually.

4 Q. Let's switch gears again and talk about distributors
14:21:54 5 for a second.

6 A. Yeah.

7 Q. You -- Lubecore sells its products in the United
8 States through are distributors, correct?

9 A. Yes.

14:22:05 10 Q. And along the way, Lubecore provides some sales
11 support for its distributors, correct?

12 A. Yes, we do.

13 Q. But, you don't control their sales activities, do you?

14 A. No.

14:22:25 15 Q. Sales process. Have you participated in sales calls?

16 A. Yeah.

17 Q. Can you explain to the jury what it takes to sell an
18 automated lubrication system?

19 A. Yes, one moment. Excuse me.

14:22:42 20 The sales process, actually I love sales, and the way
21 I look at sales is that people really buy something for only
22 like three reasons really. To me the first reason is to
23 solve a problem. The second reason would be to save money,
24 and the third reason could be to make an improvement. So
14:23:02 25 when we go into a sales call with my distributors, I always

Eissis - Direct

1 urge them to ask questions of the prospective customer that
2 we have, and we try to find out, you know, what is this
3 company doing, you know, how are they doing the maintenance
4 and what -- you know, which benefits that we have at our
14:23:22 5 system could apply here.

6 For example, first we have to find out what -- what
7 our competition is. Like our competition could be manual
8 lubrication, like people greasing trucks by hand.

9 Competition could be another product. So we're asking a
14:23:38 10 number of questions. We find out like which way we have to
11 take it. In other words, in order to make it work for the
12 customer and where we could potentially have benefits for
13 customer, and when we are -- we have found out that, you
14 know, really, you know, this customer has to bring a

14:23:53 15 structure in. We might focus on those advantages. And if
16 he has to compare to manual lubrication, we have to pull --
17 we normally have to talk about a product. We sell the

18 concepts. And we explain that if you have to grease by
19 hand, you have to -- first of all, you have to do it on a
14:24:09 20 regular basis, like on the dump truck like we want to do it

21 weekly to keep everything in good shape. So then the --
22 then the savings come more from the labor end. Other people
23 might have stuff there out because they go away for a long
24 time. So then we go more to the component replacement of
14:24:24 25 that. So the sales pitch is different every time. It

Eissis - Direct

1 really depends on what -- for what reason the customer, you
2 know, is looking at us and what we discover by our
3 interview.

14:24:38

4 **Q.** How many -- how many sales meetings does it usually
5 take before a customer makes a decision?

14:24:53

6 **A.** It's -- quite often, you have to go there, you know,
7 at least a couple times. Then they ask for a quotation, and
8 you're waiting for a new truck to be delivered. And we
9 never -- we never recommend putting it on an old truck
10 because, you know, you might already have air on the trucks.
11 You're not really proving anything so much. So typically,
12 it takes really, normally months.

13 **Q.** How does Lubecore advertise its products in the United
14 States?

14:25:18

15 **A.** It has mainly been trade shows and door-to-door sales,
16 knocking on doors, making appointments, getting customers
17 through the distributors.

18 **Q.** Mr. Eissis, I'm showing you what's been marked as
19 Defendant's Exhibit X.

14:25:54

20 **A.** Yeah.

21 **Q.** I think we saw some of this yesterday. What is this?

22 **A.** This is a document that we were being asked to prepare
23 for your firm, for this case, I believe. We had to disclose
24 our 2009, 2010 revenue, I believe, 9 to 11, yeah.

14:26:21

25 **Q.** Through September 2011, right?

Eissis - Direct

1 **A.** Yes, that's right. So Lubecore, International
2 financial shows achieved in the United States.

3 **Q.** Okay.

4 **A.** For the period of 2009 to 2011.

14:26:36 5 **Q.** Can you tell from this document how many -- now let me
6 ask you this. You did not prepare this yourself, did you?

7 **A.** No.

8 **Q.** Did you ask someone to prepare it?

9 **A.** Yeah.

14:26:45 10 **Q.** Who prepared it?

11 **A.** Petro Falfa made that, Petro and Caleb together.

12 **Q.** Petro Falfa?

13 **A.** And Caleb Smith.

14 **Q.** And what is Petro's position?

14:26:56 15 **A.** Petro is an accountant.

16 **Q.** And the other gentleman?

17 **A.** Caleb is an inside sales.

18 **Q.** Was this document derived from the financial records
19 of Lubecore?

14:27:07 20 **A.** Yeah, it would come out --

21 MS. MICHELSON: I object.

22 THE COURT: Overruled.

23 THE WITNESS: That would come out of our

24 ACCPAC system, I believe. And -- yeah, pretty much ACCPAC,

14:27:15 25 I would say.

Eissis - Direct

1 Q. What's the name of that?

2 A. ACCPAC, I believe that's what I used.

3 Q. Spell that, please.

4 A. I think A-C-C-P-A-C.

14:27:24 5 Q. Okay.

6 Can you tell from this document how many pumps

7 Lubecore sold in the United States in 2009?

8 MS. MICHELSON: Objection.

9 THE COURT: Overruled.

14:27:36 10 THE WITNESS: In this document, it says there

11 was 131 pumps sold in 2009.

12 Q. Do you have any reason to dispute the accuracy of that
13 number?

14 A. Not really. I really guess 200, I guess, optimistic.

14:27:53 15 Q. How about how many pumps sold in the United States in

16 2010?

17 A. Says 164.

18 Q. You have any reason to dispute that number?

19 A. No.

14:28:01 20 Q. And the number of pumps sold through September 31,

21 2011?

22 A. 158.

23 Q. Okay. Looking at the revenue figures now, on the far

24 left column, those are not just pump sales revenues, are

14:28:18 25 they?

Eissis - Direct

1 **A.** No, that's the whole system with it.

2 **Q.** And what was the revenue for the system sales in the
3 United States, the EP-0 system sales in the United States
4 for 2009?

14:28:29 5 **A.** 315, 232.

6 **Q.** After subtracting costs from that, what was the profit
7 or loss on those figures?

8 MS. MICHELSON: Your Honor, I'm just going to
9 have a continuing objection.

14:28:46 10 THE COURT: Overruled.

11 THE WITNESS: The profit and loss that Petro
12 has related to the U.S. sales is a loss of \$51,000 in 2009.

13 **Q.** 2010, what was the gross revenue on sales?

14 **A.** 474.

14:29:07 15 **Q.** 474?

16 **A.** \$474,985, sorry.

17 **Q.** And the calculated profit or loss on those sales?

18 **A.** A loss of \$207,448.

19 **Q.** And for 2011 through September 31st?

14:29:29 20 **A.** \$757,870. Start to make a little more money, \$27,063.

21 **Q.** Current through September 31, 2011?

22 **A.** That's what it says, yes.

23 **Q.** So couldn't it really have existed before September
24 31, 2011?

14:29:49 25 **A.** No.

Eissis - Direct

1 Q. Showing you the -- this second, third, and fourth
2 pages of Defendant's Exhibit X, this is Page X-2. What is
3 this?

4 A. It says the Lubecore International financial shows in
14:30:12 5 the United States.

6 Q. For what year?

7 A. Can you move it over a little bit?

8 Q. Sure.

9 A. Says for 2009.

14:30:19 10 Q. So this is the backup information for the summary
11 information?

12 MS. MICHELSON: Objection.

13 THE COURT: Overruled.

14 THE WITNESS: Yes. Looks like the same for
14:30:36 15 2010 and probably same 2011 year to date, all the way up to
16 September 31st.

17 Q. Part of the relief being sought here in this case
18 today is to stop Lubecore from selling any more EP-0 pumps
19 in the United States, correct?

14:31:22 20 A. Yeah, I believe so, yeah.

21 Q. How would Lubecore be hurt by not being allowed to
22 sell the EP-0 pump in the United States?

23 A. It would hurt us a lot, like we have plans to move
24 into the United States and to build a company. It's a big
14:31:37 25 opportunity. The market is ten times as large as Canada.

Eissis - Direct

1 We have distributors that are really very interested and
2 waiting for this case to be all over, and I really would
3 like to move into the United States, step on the gas pedal
4 and go for it.

14:31:53 5 **Q.** Why haven't you stepped on the gas pedal and gone for
6 it so far?

7 **A.** It's difficult. Like I mean there's this -- this is
8 quite a big deal for me. Like -- it's been quite a
9 bothersome and expensive affair for me to defend myself
10 against Groeneveld's allegations that started last year. We
11 have somebody looks us up on the Internet, basically pretty
12 much everybody does if you punch in Lubecore, you know,
13 immediately the third or the fourth comes down, there's
14 litigation going on between Lubecore and Groeneveld, and
14:32:27 15 people are concerned about that if they start product lines
16 or come on board with me how long will it last.

17 It's really put a damper on the -- damper on my
18 ability to keep going in the United States or to get going
19 really. Like we do a lot better in Canada right now than
14:32:45 20 the United States simply -- mostly related, I would say, to
21 that.

22 **Q.** Mr. Eissis, I'm showing you what's been marked as
23 Defendant's Exhibit Z.

24 **A.** Yeah.

14:33:13 25 MS. MICHELSON: Objection, your Honor.

Eissis - Direct

1 THE COURT: Overruled.

2 Q. It would be easier to read from the paper.

3 A. Okay.

4 Q. What language is this in, Mr. Eissis?

14:33:38 5 A. This is in the Dutch language.

6 Q. Are you fluent in Dutch?

7 A. Yeah, I grew up there, although Mr. Groeneveld's
8 lawyer in the back there probably thinks I'm not because I'm
9 from -- and speak a little different there.

14:34:00 10 Q. Can you start at the top of the document and translate
11 it for us?

12 A. Yeah.

13 On the left top of the document, what you see there is
14 a logo, and I recognize that yellow piece to be the

14:34:14 15 Netherlands, and the blue piece to be Belgium, and the red
16 piece to be Luxembourg, and it's called -- those three
17 companies are called the Benelux, Belgium, Netherlands, and
18 Luxembourg and says the title is actually translated says
19 the trademarks register. And it says Number 1 is the number
14:34:36 20 that was the number of this trademark register, says Number

21 is 0865044. So then it says the number and the day, sign
22 it, the day and the hour of the depot. So it says that it
23 was, you know, at -- the 19th of June, 2009, at 1704, that
24 this was brought in, the date until this is the 19th of
14:35:13 25 June, 2019. The name of the holder of this trademark is

Eissis - Direct

1 Groeneveld Transport Efficiency, BV. The address of the
2 holder of this trademark is Stephenson 12. That's the name
3 of the road with the house number.

4 The postal code, the place, and land, and country of
14:35:34 5 the holder is the town, is here, the postal code is 4207 HB,
6 the country is the Netherlands, the name and the address of
7 the person who Groeneveld -- I guess the law firm is where
8 has Groeneveld has to do this is Norfolk Craft Netherlands,
9 BV, and also the correspondence address of the holder, on
14:36:03 10 Holbeck 3, in Amsterdam, the Netherlands.

11 The trademark that is being registered is called
12 Lubecore, L-U-B-E-C-O-R-E. Then the class of the services
13 are Guts and Guts. It's industrial oils and greases
14 lubrication products, products for absorbing, spraying, and
14:36:32 15 binding of material, fuels, including gasoline, light oils,
16 engine oils for cooling lubrication and sealing. K-17 is
17 automatic lubrication system, machine parts of engines, and
18 K-19 is controls for automatic lubrication systems and
19 engine oil refill systems. The class summary is 04-07- 09.
14:37:09 20 The date that this was done was 26-06-2009, June the 26th,
21 2009. The publication date was also June 26, 2009, and the
22 status is that it has been accepted. So this is essentially
23 Groeneveld registering my name in the Netherlands, Belgium,
24 and Luxembourg, just to be nice or something I guess. And
14:37:51 25 this is Exhibit Zed, or Z.

Eissis - Cross

1 MR. ANASTOS: Thank you very much, Mr. Eissis.
2 I have no further questions for you at this time.

3 THE COURT: Cross-examination.

4 MS. MICHELSON: Yes, your Honor. Could we
14:38:14 5 approach? We have a slight scheduling issue.

6 THE COURT: For what?

7 MS. MICHELSON: For somebody we intend to call
8 who is going to be in class and unavailable tomorrow
9 morning.

14:38:27 10 THE COURT: Let's deal with this witness
11 first.

12 MS. MICHELSON: Okay.

13 CROSS-EXAMINATION OF JAN EISSLIS

14 BY MS. MICHELSON:

14:38:55 15 Q. Good afternoon, Mr. Eissis.

16 A. Good afternoon.

17 Q. Specifically on this Defendant's Exhibit Z, do you
18 have that?

19 Sir, you testified to the date of this document, it's
14:40:07 20 dated June 19, 2009, and then the date at the bottom is June
21 26, 2009. Right here, the 26th, 2009, and here under Item 2
22 is?

23 A. No. That's the expiring date.

24 Q. Oh, I'm sorry. Up here. June 19, 2009?

14:40:34 25 A. Yeah.

Eissis - Cross

1 Q. Okay. And so this filing proceeded, meaning came
2 before your company's entry into the United States market,
3 correct?

4 A. Excuse me?

14:40:47 5 Q. This filing occurred before your company started
6 selling its competing ALS EP-0 products in the United
7 States, right?

8 A. Actually, it's pretty close. I don't really know
9 because I think at All Points Lubrication, Tim Anthony might
14:41:06 10 have been -- I can't see it without seeing it.

11 Q. It occurred before Groeneveld -- there's testimony
12 that Groeneveld learned that you were distributing products
13 in the United States towards the end of 2009, specifically
14 the ALS pumps. This document indicates that the filing
14:41:24 15 occurred before that time, November and December, '09,
16 correct?

17 A. Can you show me the testimony?

18 Q. Can you just answer my question, sir, that this
19 document indicates that the filing was made before November
14:41:38 20 or December 2009?

21 A. This document, the filing from Groeneveld here was
22 done on the 19th of June, 2009.

23 Q. And it does not -- and it occurred -- but, it occurred
24 after you had entered into the marketplace in Canada with
14:42:00 25 the competing ALS product that's at issue in this case,

Eissis - Cross

1 correct?

2 **A.** Now, first we're talking about Canada, now the first
3 United States, and now Canada; is that correct?

4 **Q.** Yes, I think I said Canada.

14:42:13 5 **A.** Okay. Can you please tell me which question you want
6 me to answer?

7 **Q.** You entered the market with your competing ALS EP-0
8 product in Canada in 2008, correct?

9 **A.** That's correct.

14:42:28 10 **Q.** Okay. And the Defendant's Exhibit Z, the date on that
11 document is mid 2009, June, 2009, right?

12 **A.** That's correct.

13 **Q.** Okay. And it was filed in the European union in some
14 countries in the European Union, correct?

14:42:53 15 **A.** What I see here is the Benelux, Belgium, Luxembourg
16 and the Netherlands, and they are indeed in the European
17 Union.

18 **Q.** And it does not say Lubecore International, Inc.,
19 correct?

14:43:08 20 **A.** No, it says Lubecore.

21 **Q.** Okay.

22 And there are a number of Lubecore businesses in the
23 United States and in Canada as well that are not your
24 corporate or business entities, correct?

14:43:26 25 **A.** That's correct.

Eissis - Cross

1 Q. And it -- my understanding is it's standard practice
2 in the European Union to file such documents as this,
3 trial -- file for these registrations, such as DX-Z. So
4 that -- so that business knows when its competitor may be
14:43:51 5 entering into the market in its geographical territory.
6 That's standard practice, right?

7 A. I'm not aware of that practice.

8 Q. So you don't know one way or the other?

9 A. I'm not aware of that practice.

14:44:05 10 Q. And you came to Canada, I believe you said, in 1988,
11 correct?

12 A. It was the second time, yeah.

13 Q. I mean you started with CPL in 1988?

14 A. Correct.

14:44:48 15 Q. Okay. And you were about what, 24, 25 years old then;
16 is that right?

17 A. Born in '63. Yeah, that would make me, yeah, just
18 before my 25th year.

19 Q. And you were new to Canada and did not have an
14:45:07 20 established business in Canada, correct?

21 A. Excuse me?

22 Q. You did not have any kind of established business or
23 business relationships in Canada when you arrived in North
24 America in '88?

14:45:20 25 A. That's correct.

Eissis - Cross

1 Q. And you started out as a distributorship, carrying
2 Groeneveld's ALS products in Canada, right?

3 A. That's correct.

4 Q. And you did that as a distributorship until about
14:45:40 5 2001, right?

6 A. As a distributorship, yes, in 2001, I sold shares to
7 Groeneveld, correct.

8 Q. Yes. In 2001, you sold 80 percent of CPL to
9 Groeneveld for \$2.7 million, right?

14:46:02 10 A. That could be the amount, yes, that's pretty close.

11 Q. And then in 2004, you sold the remaining 20 percent of
12 EP-0 shares to Groeneveld for \$1.42 million, right?

13 A. Yes, that sounds close.

14 Q. And then even after that, in 2004, you stayed on with
14:46:21 15 Groeneveld as, I think you said, president and basically,
16 head of North American operations for Groeneveld, right?

17 A. Yeah, something like that, yeah.

18 Q. And you received salary in connection with your
19 position as an employee of Groeneveld during the following
14:46:46 20 years, right?

21 A. Yeah.

22 Q. 2004, 5, and 6?

23 A. Yeah.

24 Q. And you had bonuses paid to you as well; is that
14:46:56 25 right? That's right as well, isn't it?

Eissis - Cross

1 **A.** Yeah.

2 **Q.** And you derived other financial benefits from your
3 employment with Groeneveld, including whatever benefits or
4 perks that there were expenses and things along those lines,
14:47:12 5 right?

6 **A.** What are you talking about?

7 **Q.** Well, I don't know -- did you have additional
8 financial rewards or compensation and benefits in addition
9 to the salary and to the bonus?

14:47:29 10 **A.** Yeah, I think we had a -- I know we had a car
11 allowance and it was a benefit like health plan, I would
12 think.

13 **Q.** Okay.

14 And during those years, you left Groeneveld in January
14:47:41 15 of 2007, right?

16 **A.** I don't like to call it that.

17 **Q.** Okay. You stopped working for Groeneveld in January
18 of 2007?

19 **A.** Yeah, I was constructively dismissed in January of
14:47:53 20 2007, correct.

21 **Q.** Well, I -- okay. And up until that time, you had
22 earned in salary and bonus and perks, hundreds and hundreds
23 of thousands of dollars in remuneration and compensation for
24 the work that you did for Groeneveld's in North America,
14:48:18 25 right?

Eissis - Cross

1 **A.** Yeah, that's correct.

2 **Q.** And then at some point -- I need some water, excuse
3 me. In the time frame leading up to January, 2007,
4 departure from Groeneveld, it sounds like there was a
14:48:42 5 business -- I don't know -- a conflict I think you said, in
6 the -- in your vision and the headquarter office vision for
7 the going forward operations at -- in Canada and the U.S.,
8 right?

9 **A.** Can you please repeat that?

14:49:02 10 **Q.** You, Mr. Eissis, had a -- there was a conflict between
11 the way you wanted the business to go forward and the way
12 Groeneveld headquarters wanted the business to go forward,
13 the business plan?

14 **A.** Yes, we did not agree.

14:49:15 15 **Q.** Yes, different strategic visions for future activity
16 in North America, right?

17 **A.** That was part of it, yeah.

18 **Q.** During -- up until the time that -- oh, just one thing
19 before I move on. You said you did have some restrictions
14:49:37 20 in your -- that you weren't allowed to go into business
21 against Groeneveld or compete with Groeneveld in ALS
22 business for a period of time after you stopped working for
23 them. I believe you testified to that in direct exam,
24 right?

14:49:53 25 **A.** Which document are you referring to?

Eissis - Cross

1 Q. I believe you said in direct exam your own lawyer was
2 asking you questions?

3 A. Yeah.

14:50:10

4 Q. You said that you had certain fiduciary obligations
5 under Canadian law and you had certain restrictions that
6 prevented you from competing against Groeneveld in the ALS
7 business?

8 A. Those were from my legal advisor related to the 2001
9 sale.

14:50:27

10 Q. Okay.

11 And so you were not permitted to do that for a period
12 of time, one or two years after you and Groeneveld parted
13 ways in January 2007, right?

14 A. No, that's -- that was all expired.

14:50:43

15 Q. It expired in January of 2007?

16 A. Before that.

17 Q. Okay.

14:51:01

18 In direct examination, just here a short time ago, I
19 believe your testimony was that for a period of time after
20 you left Groeneveld, you could not engage in directly
21 competitive activities with its ALS business for a period of
22 time after you were no longer there. You just said that,
23 didn't you?

14:51:16

24 A. Yeah, but you're confusing the issue a little bit
25 here. Those restrictions were based on the sale of the

Eissis - Cross

1 company in 2001 and 2004. There was a certain amount of
2 time attached to that, and then those periods had all
3 expired by 2007. So the only restriction that I would have
4 had left would be the fiduciary obligations.

14:51:46

5 **Q.** Okay.

6 And so those continued for a period of time after you
7 left Groeneveld, right?

8 **A.** Yeah, that's right.

14:51:59

9 **Q.** Okay. And you don't dispute it was at least a year,
10 right?

14:52:20

11 **A.** No, my legal advice was that it would be between six
12 months and one year, and typically, those things depend on
13 how long the average quotation or transaction is felt for.
14 So if you are quoting products out there and you say -- you
15 quote for three months or four months, that your fiduciary
16 obligation would be linked to that. However, it's not black
17 and white, and from my understanding is it can only be
18 decided by -- what the actual date is, the actual duration
19 is, but certainly not longer than one year according to my
20 legal advice.

14:52:40

21 **Q.** All right. So your understanding was that you should
22 not engage in competitive activity against Groeneveld for at
23 least a year, that was your understanding, right, you just
24 said that?

14:52:54

25 **A.** No, it's not competitive activity. It's more selling

Eissis - Cross

1 product being out in the market. That's how I translate
2 that. I'll come back to that.

14:53:32

3 Q. And during the time that -- and until January 2007,
4 the only ALS parts and systems that you carried were
5 Groeneveld's, correct?

6 A. Can you repeat that question, please?

7 Q. I will.

14:53:46

8 Until January of 2007 up until the time you and
9 Groeneveld no longer worked with each other, the only ALS
10 parts and systems you carried were Groeneveld's?

11 A. That would be Groeneveld would be 99 percent of what I
12 did before I sold shares to Mr. Groeneveld. It would have
13 been other parts from competitors in my warehouse as well,
14 depending on needs of our customers.

14:54:05

15 Q. Sir, my question is up until January, 2007, the only
16 complete ALS systems that you sold were Groeneveld's,
17 correct?

18 A. I have sold another one.

14:54:36

19 Q. Do you recall giving testimony previously in this
20 case?

21 A. I remember --

22 Q. You can just say yes. Do you remember giving
23 testimony in the case?

24 A. Yeah, I remember that, yeah.

14:54:45

25 Q. All right. It was under oath, right?

Eissis - Cross

1 **A.** Yep.

2 **Q.** And in a courtroom, right?

3 **A.** Yep.

4 **Q.** And you swore to tell the truth about all this?

14:54:51 5 **A.** Yeah.

6 **Q.** Okay. I'm directing your attention to the transcript
7 of your hearing testimony. It is on Page 261, and I will be
8 reading from Lines 16 to 19. Let me know when you are
9 there, and I will read and I'll ask you please follow along.

14:55:44 10 **A.** Where are you?

11 **Q.** Page 261.

12 **A.** Yeah, I got it.

13 **Q.** Page 261, Line 16 through 19. Actually I'll start at
14 13 to put it in a context.

14:56:31 15 "Question: Okay. And then you were an actual
16 employee of Groeneveld through January of '07?

17 "Answer: That's right, yeah.

18 "Question: Okay. And during the time that you worked
19 for Groeneveld, when Groeneveld owned CPL, you only carried
14:56:49 20 Groeneveld parts and systems, right?

21 "Answer: That's correct, yeah."

22 Did I read that correctly for you?

23 **A.** Yes, you did read that correctly to me.

24 **Q.** Thank you. You can put that aside now if you wish.

14:57:05 25 **A.** Actually, no. I don't wish to put that aside.

Eissis - Cross

1 Q. Well, I -- then I'll come take it from you.

2 A. Because --

3 Q. There's no question before you.

14:57:17

4 A. This is the period I talked about before when I was at
5 Groeneveld.

6 Q. I don't really understand what you said. I'm sorry.

14:57:33

7 A. The system that I supplied was a Lincoln system that I
8 bought from Groeneveld, and it was before -- you're talking
9 about a period I was after Groeneveld. I'm talking about a
10 period before that.

11 Q. My only question to you, sir, was did I read from the
12 transcript of your testimony correctly, and I believe you
13 said yes.

14:57:44

14 A. And I just wanted to make sure that you had got it
15 clear.

16 Q. Okay. And during the time that you were carrying the
17 Groeneveld systems and EP-0 products and ALS products, you
18 thought they were the best on the market, right?

19 A. Yeah.

14:58:33

20 Q. You testified about this gentleman, Martin Vermeulen,
21 from Tae Sung, right?

22 A. Yes.

23 Q. Okay. And you actually met him at that trade show in
24 Amsterdam, that was October of 2007. Do you recall giving
14:58:51 25 testimony to that effect in this case?

Eissis - Cross

1 **A.** It's in the fall. It could have been October.

2 **Q.** Okay.

3 **A.** I can talk to you for ten hours. So, yeah, it could
4 have been.

14:59:03 5 **Q.** Okay.

6 And then you visited Mr. Vermeulen in North Korea and
7 visited Tae Sung in North Korea in December of 2007?

8 **A.** That's correct.

9 **Q.** And that was the visit that you talked about during
14:59:19 10 your examination when Mr. Anastos was asking you questions
11 about going to the -- going to the Tae Sung and meeting with
12 Mr. Vermeulen, right?

13 **A.** That's correct.

14 **Q.** And during that visit, that is when you hired Mr. Tae
14:59:40 15 Sung and Mr. Vermeulen to make a pump and a -- and ALS
16 system for Lubecore?

17 **A.** That's incorrect.

18 **Q.** Page 228?

19 **A.** Okay.

15:00:44 20 **Q.** Of your hearing testimony. And I am reading from --
21 starting Line 20.

22 "Question: Okay. And you re-met Martin Vermeulen I
23 believe you said in October, around October of 2007, that's
24 when the trade show was in Amsterdam, right?"

15:01:08 25 **A.** Where are you? Sorry.

Eissis - Cross

1 Q. Page -- Line 20 of Page 227.

2 A. Okay. Go ahead, yeah. Is there a question?

3 Q. Just follow along and then I'm going to ask you at the
4 end whether I read your testimony to the jury correctly.

15:01:32 5 Okay? Page 227, Line 20.

6 "Question: Okay. And you re-met Mr. -- you re-met
7 Marvin Vermeulen I believe you said in October, around
8 October 2007. That's when that trade show was in Amsterdam
9 right?

15:01:48 10 "Answer: Yeah. That -- that sounds about right.

11 "Question" --

12 A. Actually, I don't see where you're reading that. Am I
13 on a different page? What page are we on?

14 Q. 227.

15:02:02 15 A. Okay. I have something different here that I'm
16 looking at, different text.

17 Q. All right.

18 We'll do it differently because we're having trouble
19 finding it.

15:02:17 20 MS. MICHELSON: Can you switch, please? Thank
21 you.

22 Q. Page 227, Line 20.

23 "Question: Okay. And you re-met Martin Vermeulen I
24 believe you said in October, around October 2007. That's
15:02:47 25 when that trade show was in Amsterdam right?

Eissis - Cross

1 "Answer: Yeah, that -- that sound about right.

2 "Question: And you were thinking about getting back
3 into the ALS business at that point in time, right?

4 "Answer: Yes, it does interest me.

15:03:03 5 "Question: Okay. But, you could not find a product
6 or system that existed at the time that you liked, right?

7 "Answer: Even if I found something that I liked, it
8 was more than that. It was also I didn't like the product,
9 but I also didn't like the limitations I would have as to
10 where I could distribute the product.

11 "Question: Do you recall testifying that when you met
12 Martin Vermeulen, you and he had a conversation, you talked
13 about ALS, and you told him you couldn't -- you didn't have
14 a product that you liked or could believe in?

15:03:46 15 "Answer: Yeah. 15.

16 "Question: Do you remember telling me that, 16?

17 "Answer: Yes. 17.

18 "Question: Okay. And that was in the end of 2000
19 and -- gosh, 2007, right?

15:04:00 20 "Answer: Yeah, that's correct.

21 "Question: And then you went to Korea and met with, I
22 guess, the president or owner of Tae Sung and Mr. Vermeulen
23 as well?

24 "Answer: Yeah.

15:04:13 25 "Question: To discuss your pump for Lubecore and what

Eissis - Cross

1 it would look like and how it would function; is that right?

2 "Answer: Not what it would look like. What I would
3 like to see in a pump, what features I would want in a pump.

4 "Question: And that was in December of 2007, you have
15:04:31 5 testified in our case?

6 "Answer: December of -- that's correct."

7 Okay. Did I read this correctly?

8 **A.** Yes, you read that correctly.

9 **Q.** Okay. And so you hired Mr. Vermeulen and Tae Sung in
15:04:52 10 December of 2007?

11 **A.** No, that's not what it says. Read it again, if you
12 want.

13 THE COURT: I think we can go on to something
14 else.

15:05:03 15 THE WITNESS: Just so you know in January, I
16 finally went ahead with it. We talked about it, but I
17 didn't make a decision in December.

18 **Q.** In January of '08?

19 **A.** In -- January of '08.

15:05:12 20 **Q.** So you're investigating it and you'd gone out there to
21 meet with them?

22 **A.** Yeah, taken a look at it.

23 **Q.** And then you made the decision in January of '08?

24 **A.** Yeah. Just ask me what you want to know.

15:05:23 25 **Q.** You hired them in January of '08?

Eissis - Cross

1 **A.** In January of '08. I went ahead with making the
2 tooling and moving on, yes.

3 **Q.** With Tae Sung and Mr. Vermeulen?

4 **A.** Yes.

15:05:42 5 **Q.** Sir, you've given testimony to the contrary in another
6 matter concerning your involvement in the ALS business in
7 that same time frame, correct?

8 **A.** No, I did not. And we already discussed that earlier.
9 And if I bring that to your attention again, then go for it.

15:06:07 10 **Q.** Do you recall testifying in another matter under oath
11 that you were not involved or had made any plans for getting
12 into a business, the automatic lubrication system business
13 in competition with Groeneveld in January of 2008?

14 **A.** No, I want you to show it to me on paper. You're
15:06:30 15 turning things around. And I'll show exactly how it is. I
16 signed a document and I know exactly what this is all about.
17 I signed that paper truthfully in Canada in January of 2008,
18 and after that, I went ahead with Martin.

19 **Q.** You not only signed affidavits and papers in that
15:07:00 20 matter in December of '07, you also gave testimony under
21 oath in January of '08, right?

22 **A.** That's possible.

23 **Q.** I'm showing you now a transcript from testimony in
24 another matter in Canada in which you sued Groeneveld,
15:07:30 25 correct?

Eissis - Cross

1 MR. ANASTOS: Your Honor, she has a motion in
2 limine pending not to talk about this.

3 THE COURT: Right, you filed the motion.

4 BY MS. MICHELSON:

15:07:38 5 Q. The date on it is January 14th, '08. I'm going to
6 read for you. It's on Page 12.

7 "Question: The question was what product or
8 product -- what product or product categories would you have
9 spent time on while you were in a relationship with
15:07:58 10 Groeneveld or CPL automated greasing systems, oil master,
11 grease sites, speed limits, cab, Orlaco Cameras, Voyager
12 Cameras, and oil drain clubs.

13 "Question: All right. And of all those product
14 categories, Mr. Eissis, are you currently directly or
15:08:17 15 indirectly involved in the sale or attempted sale of any of
16 those today?

17 "Answer: Of those products?

18 "Yes.

19 "Answer: Yes, I am.

15:08:27 20 "Question: Which ones are you pursuing business in?

21 "Answer: In Orlaco Cameras.

22 "Question: Any of the other ones?

23 "Answer: No."

24 I read that correctly?

15:08:38 25 A. Yes, and that shows you that I did not sell automatic

Eissis - Cross

1 greasing systems at that time. You are correct.

2 **Q.** Reading further, Page 122.

3 "Question: Is it fair to say that among other things,
4 given your extensive experience in the businesses that CPL
15:08:55 5 and Groeneveld run, that you would like to get into the
6 business, into business selling the types of products or
7 similar types of products that Groeneveld and CPL sell?

8 "Answer: Can you rephrase that question?

9 "Question: Is it fair to say that you would like or
15:09:16 10 will consider entering into businesses that will sell
11 products that are the same as or similar to products that
12 Groeneveld and CPL had sold historically?

13 "Answer: Will consider, yes."

14 Did I read it?

15:09:31 15 **A.** Yes, I considered that at that point. And after that
16 I gave the go ahead with Martin.

17 **Q.** And you did not disclose at the time that you actually
18 had done more than just considered it, correct?

19 MR. ANASTOS: Objection.

15:09:45 20 THE WITNESS: I was not asked that question.

21 THE COURT: You can answer that. That answer
22 may stand. Let's go on to something else.

23 **Q.** "Question: And other than what you've described in
24 your testimony today, Mr. Eissis, and this will be a
15:10:02 25 multi-stage question, have you carried on business other

Eissis - Cross

1 than as you -- since January the 29th, 2007, other than as
2 you've described in your testimony today?

3 "Answer: No.

4 "Question: The answer is no?

15:10:18 5 "Answer: The answer is no.

6 "Question: Other than the potential leads, if I can
7 call them that, that you have described in your testimony
8 today, are there any other business opportunities that you
9 have considered or pursued since January the 28th, 2007?

15:10:35 10 "Answer: Yes.

11 "Question: What are they?

12 "Answer: I've considered bringing sheep from Calgary
13 to Ontario.

14 "Question: Sheep?

15:10:46 15 "Answer: Sheep, yes."

16 Did I read that correctly, too?

17 **A.** Yeah, you got it.

18 **Q.** Nothing about going to Korea and hiring or hiring a
19 company to make these competitive systems?

15:11:03 20 **A.** What was the date on this document?

21 **Q.** You didn't disclose that information in response to
22 the questions asked at the time, correct?

23 MR. ANASTOS: Objection.

24 THE COURT: It wasn't -- it speaks for itself.

15:11:29 25

Eissis - Cross

1 BY MS. MICHELSON:

2 Q. Mr. Eissis, we heard you testify at length?

3 THE WITNESS: Excuse me. My mouth is very
4 dry. Can I get a bottle of water?

15:11:36 5 THE COURT: Yeah, you can. We'll take our
6 afternoon recess at this time, folks. Fifteen minutes.
7 Keep in mind the admonition.

8 (Thereupon, a recess was taken.)

9 MS. MICHELSON: May I proceed, your Honor.

15:30:59 10 THE COURT: Sure.

11 BY MS. MICHELSON:

12 Q. Mr. Eissis, you testified a number of Groeneveld pumps
13 here today, and I'd like you to confirm that you think this
14 is the first generation of the Groeneveld.

15:31:11 15 A. No.

16 Q. What, is this the first one?

17 A. I can't see it from here, but if you hold it out of
18 the lineup a little bit. Okay. This one.

19 Q. Is this the first one?

15:31:24 20 A. Actually, I would like to answer the question.

21 Q. Well, my question is simple.

22 A. Okay. So on that pump, if you read it to the right
23 inside, it says Series B. Okay. So I was not there -- I
24 was not part of that, but that's from before the first one
15:31:41 25 you pointed out.

Eissis - Cross

1 Q. So this is the first one?

2 A. It's an earlier one. I'm not saying first. It is an
3 earlier version than this one, yes, than that one.

4 Q. So --

15:31:51 5 A. Would you like to identify it, which one you're
6 talking about.

7 Q. I'll do that. So the record is clear you're
8 indicating Defendant's Exhibit AA came first in time.
9 Defendant's Exhibit Y, came second in time, and then this
10 four-liter pump, we marked Exhibit 143. That came third in
11 time, correct?

12 A. I can't say that. See the -- I was only around since
13 1988. And the first pump that you see here because it has
14 the word Series B on it. I -- there might be a Series A,
15 which I'm not aware of, but I know that that pump is older
16 than the 1988 pumps that I was buying. So it's not
17 necessarily the first one. I cannot testify to that. I was
18 not -- I was not around then.

19 Q. Right, you weren't around, were you, in 1981 or 2 or 3
15:32:48 20 or '85 with Groeneveld, were you?

21 A. I was not around with Groeneveld. That's correct.

22 Q. Yes, and you weren't with Groeneveld in 1986 or '87
23 either, correct?

24 A. I saw Groeneveld products being installed at a Daph
15:33:07 25 dealership in the Netherlands in 1986.

Eissis - Cross

1 Q. So you didn't know what was going on in the United
2 States with pumps and Groeneveld pumps in -- at any time in
3 the 1980s until you started carrying product in Canada in
4 1988, right?

15:33:19 5 A. My experience started in Canada, in 1988.

6 Q. Okay. And so you have no -- I mean honestly you don't
7 have any personal, firsthand knowledge which of the pumps
8 are first, second, third in time, correct?

9 MR. ANASTOS: Objection.

15:33:34 10 THE WITNESS: The first pump you see here,
11 when I was in the Netherlands with Groeneveld, I took photos
12 of machines, and that pump, you would see on the trucks in
13 the Netherlands.

14 Q. In the Netherlands?

15:33:45 15 A. And I also have seen that pump in North America as
16 well in Canada because that's where it's from.

17 Q. You testified that Mr. Vermeulen designed these -- the
18 pump that's at issue in the case, correct?

19 A. This pump that you're referring to.

15:34:09 20 Q. The Groeneveld, maybe Mr. Groeneveld -- Mr. Vermeulen
21 testified to that.

22 A. You tell me, I don't know what you're --

23 Q. Well, do you know who engineered this pump, Exhibit
24 143 for Groeneveld? Do you know personally who did that?

15:34:31 25 A. Can you show me the pump? Okay.

Eissis - Cross

1 Q. Do you personally know who did that, engineered this
2 pump 143?

3 A. Yes, I do.

4 Q. You weren't there with Groeneveld in the 80's -- until
15:34:51 5 '88, right?

6 A. I was with Groeneveld in 1988, and this pump, for
7 example, if you look at it has a follower plate if you want
8 to hold it up.

9 Martin Vermeulen talks about using the follower plate
15:35:07 10 in the pump, so the other pump that you see the second one
11 cannot have a follower plate because it does not have a
12 guide rod. So obviously Martin is talking about that pump
13 that you just held up.

14 Q. Okay. You never worked for Groeneveld at their
15:35:20 15 headquarters office, right?

16 A. I was there on a regular basis. I visited there.

17 Q. Did you work at their headquarters?

18 A. I only worked there for maybe ten days.

19 Q. Okay.

15:35:30 20 You didn't work for the production department or the
21 technical department or the factory which was in Italy,
22 right?

23 A. No, I did not work for Groeneveld in Italy.

24 Q. Okay. And you -- will you agree with me that the
15:35:56 25 basis of all three of these Groeneveld pumps look the same?

Eissis - Cross

1 And I'll read them in the record. DX-AA, DX-Y, and this
2 143. These look the same, these bases, don't they?

3 **A.** I went through great trouble earlier to explain to the
4 jury the differences in the bases of those pumps. If I --

15:36:24 5 **Q.** I know you did that, but my question is this, my
6 question is these three bases look the same, right?

7 **A.** They look similar.

8 **Q.** And I mean this -- these little cut out pieces here
9 are the same on each of these three pumps, the center of
10 each pump?

11 **A.** I can't say they're the same, but they look similar.

12 **Q.** They look the same, though, right?

13 **A.** They look similar, yeah.

14 **Q.** The identification plate is in the same location?

15:36:55 15 **A.** No, it's not.

16 **Q.** It's not in the front center of the pump?

17 **A.** Actually if you look at the first pump here, that
18 identification plate is on the edge of the pump.

19 **Q.** Uh-huh.

15:37:07 20 **A.** And the other one is -- it's a long narrow one that
21 has to be brought through by something and the other is
22 square and lower so not in the same point, no.

23 **Q.** You agree with me that the ID plates are on all three
24 dead center of the pump, won't you?

15:37:25 25 **A.** They are on the front, yes.

Eissis - Cross

1 Q. Okay. Dead center, right?

2 A. I did not measure that, no.

3 Q. I'm asking if you'll agree with me?

4 A. That one is kind of missing.

15:37:37 5 Q. So you can't say. Okay. We'll let the jury decide.

6 And this -- what's that the filler, the filler -- what do
7 you call this guy again, that's the filler line?

8 A. Excuse me.

9 Q. What do you call this pump again? I don't want to
15:37:57 10 mis --

11 A. That is the -- can you show it to me? I believe
12 that's the Dutch cap that goes over the filler connector.

13 Q. The filler who, what?

14 A. The dust cap that goes over the filler connector.

15:38:10 15 Q. And that part is in the same location on all three of
16 these Groeneveld pumps, all three generations of these
17 Groeneveld pumps, right?

18 A. If you would put them in a row so I can see them.
19 There it's in a similar location.

15:38:24 20 Q. You want to step down because I'd like the jury to see
21 that. So if you want to step down, you're more than
22 welcome. But I -- I can also hold them for you, but I'd
23 like the jurors to follow along. They might not know what a
24 filler coupler is.

15:38:40 25 These items, you'll agree with me, they're in the same

Eissis - Cross

1 place on the pump?

2 **A.** This housing is different. It's in a similar
3 location. You would have to measure that.

4 **Q.** You have to measure that to see that, right?

15:39:00 5 And you see this part front and center, these
6 distinctive sort of parts to the housing that stick out in
7 this matter, do you see what I'm talking about?

8 **A.** Yeah, I see it, yeah.

9 **Q.** They repeat in all of the generations of the
15:39:20 10 Groeneveld, including the ones that you brought to court?

11 **A.** Yes.

12 **Q.** Just now?

13 **A.** Yeah.

14 **Q.** Okay.

15:39:27 15 So I mean -- you'll agree with me the basic general
16 overall shape and configuration of these three pumps is the
17 same, there are differences, I will give you that, but my
18 question is you'll agree with me that the basic general
19 overall shape configuration and impression that these three
15:39:45 20 pumps create is the same, right?

21 **A.** See this pump on the front here has the square.

22 **Q.** I know you don't want to answer my question.

23 **A.** That is out.

24 **Q.** You can return to the stand now. Thank you, sir.

15:39:55 25 I know you don't like to answer my questions, but my

Eissis - Cross

1 question is you will agree with me, will you not, that all
2 three have the same general overall shape, visual
3 presentation, arrangement of the parts, all three
4 generations, correct?

15:40:10 5 **A.** There are similarities in the bottom of those pumps.

6 **Q.** And in the reservoirs, right?

7 **A.** I think there's a big difference between the
8 reservoirs.

9 **Q.** Is the shape similar?

15:40:22 10 **A.** Pardon?

11 **Q.** Does the shape of it look the same?

12 **A.** No. The pump on the two has a totally different
13 reservoir than 1 and 3.

14 **Q.** Is this reservoir on DX-AA a cylinder?

15:40:35 15 **A.** Yes.

16 **Q.** Okay. Is this reservoir on DX-Y a cylinder?

17 **A.** No, it's a cone.

18 **Q.** This is a cone?

19 **A.** Yeah. That's the problem with it. It is shaped on
15:40:48 20 the inside as a cone, that's why you can't use a follower
21 plate in it.

22 **Q.** But, I'm asking you this shape that I'm looking at,
23 you're saying that this is a cone?

24 **A.** Yeah, the inside has a conical -- a conical shape.
15:41:02 25 It's smaller.

Eissis - Cross

1 Q. How about the outside, the outside of the cylinder
2 shape, right?

3 A. The cylinder with two bubbles on the back and pipes in
4 the back, yeah.

15:41:14 5 Q. Thank you.

6 And the shape of the third pump here, that's
7 Defendant's Exhibit 143, that's the cylinder, too, isn't it,
8 the reservoir?

9 A. Yeah, between the lid and the housing, yeah.

15:41:29 10 Q. And the six-liter Lubecore, Defendant's Exhibit B --
11 do we have another one of Groeneveld somewhere, A -- we have
12 Defense Exhibit A. I'll take this. These have also been
13 marked as an exhibit in the case. This is Plaintiff's
14 Exhibit 1 and this is Defense Exhibit B; B being the
15 Lubecore, and 1 being the Groeneveld. Do you see those
16 here?

17 A. Yeah.

18 Q. All right.

19 And that overall shape is the same, the reservoir is
15:42:07 20 bigger, it's six liters instead of the four, right?

21 A. Six is bigger than four, that's correct.

22 Q. Yeah, and besides the fact the reservoir is taller for
23 more grease, right?

24 A. Yeah.

15:42:30 25 Q. It's the same shape, overall shape, the cylindrical

Eissis - Cross

1 reservoirs and the bases that have these unique cut outs
2 here in the aluminum, see that?

3 **A.** It's not a unique cut out. It just holds the bottom
4 on. The function of those little cut outs is to put a bolt
15:42:51 5 in to hold the lid on, the bottom cover on. It's not a
6 unique shape. It's just -- there's a threaded hole in there
7 that holds the bottom hole on plate on the top that has a
8 function --

9 **Q.** Anybody else's single-line pneumatic piston generated
15:43:09 10 pump --

11 **A.** Yeah.

12 **Q.** -- other than yours, mimic these pieces?

13 **A.** Let's have a look at it, how they both go on.

14 **Q.** You can't see it?

15:43:25 15 **A.** No, you said anybody else's. I'm only seeing two.
16 I'd like to see how Bijur holds their bottom on the pump.

17 **Q.** Well --

18 **A.** You asked me about --

19 **Q.** Don't you know?

15:43:37 20 **A.** If you show me a photo, then that will refresh my
21 memory. We're talking very detail here, so.

22 **Q.** Okay. So you -- you don't know about the other
23 competitors' pumps unless you see pictures of them?

24 **A.** Yeah, actually I know more about the Lubecore pump and
15:43:53 25 the Groeneveld pump than about a Bijur pump.

Eissis - Cross

1 Q. By the way, there's extra aluminum on your Lubecore
2 pump?

3 A. I would not know.

4 Q. That doesn't make this pump grease --

15:44:15 5 A. Pardon?

6 Q. -- through your system, this piece here?

7 A. Yeah.

8 Q. That lip, these lips?

9 A. Yeah.

15:44:21 10 Q. That doesn't pump grease in an ALS, correct?

11 A. The functionality of the rib is to create extra
12 strength between the mounting bracket and the top of the
13 piece here so that there's no movement going on there.

14 Q. Back to -- these lips do not pump grease, from the
15:44:40 15 system, do they?

16 A. The functionality of the lip is that it creates
17 strength between the top and the bottom. So when it is
18 vibrating on the torque, you won't see cracks in there.

19 Q. Hm.

15:44:51 20 There's extra aluminum here as well on the Lubecore
21 for the filler line, right?

22 A. Compared to what?

23 Q. Compared to the Groeneveld?

24 A. The functionality of the extra aluminum there like I
15:45:08 25 explained is that.

Eissis - Cross

1 Q. That's not my question.

2 A. Can I give my answer? There's a fitting that goes
3 into that extra piece of aluminum so that you could put a
4 lens on it so the functionality is to solve the problem that
15:45:19 5 we had with the Groeneveld pump where you couldn't get the
6 fitting out.

7 Q. Can I get that Ecostar picture? Thanks. And this is
8 that Ecostar pump that you talked about on direct exam, our
9 picture is Exhibit 47-1 and there's a companion 47-2. You
15:45:48 10 see that there?

11 A. Yes, I see it.

12 Q. That's the same one that appears in Defense Exhibit CC
13 up here in the right-hand corner?

14 A. It's probably a picture of a similar pump, yeah. It's
15:46:08 15 a different picture, but --

16 Q. It's the same pump, isn't it? The same kind of pump,
17 isn't it?

18 A. Yeah, I would say so.

19 Q. Okay. All right. And you said that this is also a
15:46:22 20 pneumatic with a piston inside, right?

21 A. Yeah. That's also a single stroke air operated pump.

22 Q. Okay. And this base looks different than the
23 Groenevelts that you have lined up in the Lubecore, right?

24 A. The shape on the, of bottom?

15:46:44 25 Q. Yeah.

Eissis - Cross

1 **A.** Looks different, yeah.

2 **Q.** The overall shape is also different as well, right?

3 **A.** I still see like -- I think that the Lubecore pump
4 looks more like a Groeneveld pump than the Ecostar looks
15:47:00 5 like a Groeneveld pump.

6 **Q.** The Lubecore looks identical to the Groeneveld pump,
7 doesn't it?

8 **A.** No, I don't agree with that. It looks a lot alike,
9 but I explained clearly the differences here. It's not
15:47:11 10 identical.

11 **Q.** Well, doesn't look like the Ecostar, does it?

12 **A.** Would you like me to show you the differences again
13 between the two pumps?

14 **Q.** Not really, but I'd like you to agree it looks nothing
15:47:23 15 like the Ecostar pump because that's what I asked. Can you?

16 **A.** The Ecostar pump looks less like a Lubecore pump than
17 the Groeneveld pump does.

18 **Q.** Martin Vermeulen could not have designed the EP-0
19 Groeneveld pump that we are at issue with in this lawsuit
15:47:45 20 because he didn't even work at Groeneveld during the time
21 period that it was developed. Will you agree with me?

22 **A.** No, and that's exactly why I brought those two pumps
23 in to explain that to you. I figured out last week you
24 would go in that direction, so when it's clear that Martin
15:48:01 25 is talking about a pump that has a follower plate in it.

Eissis - Cross

1 Q. You only think -- you only figured that out last week?
2 Because we've been taking testimony in this case for a long
3 time. You only figured that out last week?

4 A. Yeah, I did, yeah.

15:48:11 5 Q. Okay.

6 And isn't it true -- you know anything about the
7 history with Grease Jockey with the Groeneveld as well?

8 A. Just hearsay.

9 Q. Well, the same as the history with these, too, right?

15:48:30 10 MR. ANASTOS: Objection.

11 THE WITNESS: No, no.

12 THE COURT: Overruled.

13 THE WITNESS: The pump, 1988 pump, I sold
14 hundreds of that one myself. I had it in my hands, and that
15 particular pump that you see there was also taken off a
16 truck in Canada. I've seen it on the road. I know that is
17 an older version of Pump 1, and then the one with the shape
18 that I used to buy was after that. I know that from my
19 personal -- from my personal knowledge.

15:48:53 20 Q. So after Groeneveld -- Groeneveld at one point decided
21 to stop importing the Grease Jockey TI Samuel Moore system
22 and decide to make its own pump?

23 A. Correct.

24 Q. Correct? And that was in 1979 and 1980, correct?

15:49:11 25 A. That's what Willem van der Hulst said.

Eissis - Cross

1 Q. You don't dispute that, do you?

2 A. Actually I can't confirm it neither, and I would like
3 to point out to you on the bottom of the pump the lids
4 there, it's called a filler pump.

15:49:26 5 Q. Okay. I'm not sure what you said, but that's okay.

6 A. On the bottom of the base of that pump, it says Furna,
7 which is different than Groeneveld.

8 Q. Also the labels don't tell the whole story, do they?

9 A. Pardon?

15:49:43 10 Q. The labels don't tell the whole story, do they?

11 A. Which label?

12 Q. Any of them.

13 A. The label on the side of the housing? The label on
14 the side of the housing says if you are in a GTE.

15:50:01 15 Q. So Groeneveld went -- decided it would have -- develop
16 its own pump and they did that with Sempress. Do you recall
17 that testimony?

18 A. I heard testimony about that, yes.

19 Q. Okay. And they did that for awhile and then scrapped
15:50:15 20 it, right?

21 A. Yeah.

22 Q. And then designed -- I'll go somewhere else. Martin
23 Vermeulen says he designed this version of the Groeneveld,
24 this generation of the Groeneveld that's at issue in the
15:50:30 25 case, correct?

Eissis - Cross

1 **A.** Which pump are you talking about now?

2 **Q.** The one at issue in the case.

3 **A.** I heard Martin Vermeulen say in his testimony that he
4 was part of a team that developed that pump.

15:50:41 5 **Q.** Okay. March couldn't have done it because he wasn't
6 there by his own testimony when the thing happened; he
7 couldn't have been?

8 **A.** Totally incorrect about it. Martin Vermeulen was
9 there in 1988 when I was there. Martin Vermeulen was there
15:51:01 10 between 1988. I bought the second pump in 1988, and the
11 third pump came in the 90's. So Martin Vermeulen was there
12 for a number of years before I got the pump, the follower
13 plate which solves the issues ahead, and I talk personally
14 to Martin Vermeulen about that, about the issues that I had,
15:51:21 15 and he explained to me that it was going to be a solution to
16 the follower plate coming and that is introduced in that
17 last pump -- the third pump that you see there. So I know
18 that firsthand. I talk to him, I talked about my problem.

19 **Q.** Martin Vermeulen testified that he started with
15:51:38 20 Groeneveld in 1984 and upon his hire, started working on the
21 Groeneveld system that is the one that's at issue in this
22 case, right?

23 MR. ANASTOS: I'll object to the
24 characterization.

15:51:52 25 THE COURT: Sustained. Ask what he did, not

Eissis - Cross

1 what somebody else testified about.

2 BY MS. MICHELSON:

3 Q. Martin Vermeulen was not there at Groeneveld?

4 THE COURT: Let's go on to something else.

15:52:12 5 MS. MICHELSON: In 1986.

6 THE COURT: Ms. Michelson, go on to something
7 else. We beat this one to death.

8 BY MS. MICHELSON:

9 Q. ALS pumps all work even though they look different,
15:52:28 10 correct?

11 A. Yeah, correct.

12 Q. The various competing ALS automatic lubrication system
13 pumps, they all work as well as the Groeneveld and the
14 Lubecore, even though they look different, correct?

15:52:45 15 A. Can you repeat that?

16 Q. The various competing automatic lubrication system
17 pumps all work as well as the Groeneveld and the Lubecore,
18 even though they look different, right?

19 A. Competing pumps are you talking about?

15:53:07 20 Q. The ones with pistons in them, the ones with air in
21 them, they work -- you testified -- do you remember
22 testifying that they all work as well even though they look
23 different, that it doesn't have to look exactly like the
24 Groeneveld for it to work? Do you recall saying that?

15:53:21 25 A. Actually, I don't recall it, but I believe I did. It

Eissis - Cross

1 makes sense.

2 Q. Okay. So you agree they could look different and
3 still work?

4 A. Yes.

15:53:31 5 Q. The Lubecore pump piston ratio is 10 to 1, right?

6 A. That would be rounding it up.

7 Q. 66. Actually, I'll use theirs. Actually, this is
8 Defendant's Exhibit K.

9 A. Yeah.

15:54:01 10 Q. This is the Lubecore manual, general manual for the
11 single-line automated lubrication system with a
12 pneumatically operated pump, correct?

13 A. That's correct.

14 Q. This is Lubecore's general manual?

15:54:13 15 A. Looks like it.

16 Q. Reading from Page 13 of your manual?

17 A. Can you make it a bit sharper.

18 Q. I sure can. Here's a picture of the piston, a diagram
19 actually of a piston in your pump.

15:54:39 20 A. Yeah.

21 Q. The Lubecore pump?

22 A. Yeah.

23 Q. It talks about a 10 to 1 ratio?

24 A. Can we see what it says there? Reduction ratio almost
15:54:49 25 10 to 1. Okay.

Eissis - Cross

1 Q. Correct?

2 A. Yeah, I said that, yeah.

3 Q. 10 to 1?

15:54:57 4 A. You know when we say 10 to 1, because you're going
5 into so much detail with me, if I measure this piston here.

6 Q. Yeah.

7 A. And I measure this hole down there, and I do the
8 calculation how many square inches this hole is and that is,
9 it might be like 9.5 or 10.1. I'm just being careful that I
10 don't get you off on a tangent that I say it's 1 to 10 and
11 you say it's 1 to 9 and half or something. It's close.

12 Q. I appreciate it. And so the ratio is a factor of the
13 diameter of the top part of the piston, which is the grease
14 piston -- let me finish my question. It's really -- to the
15 diameter of the air piston which is at the bottom of that --

16 A. No.

17 Q. The part you have in front of you?

18 A. No, that's not correct. It's not the diameter. It's
19 the square -- it's the square inches. If you would take ten
20 times this diameter.

21 Q. Um-hum.

22 A. You would be getting this big. So it's actually the
23 square inches or square centimeters. That's the ratio.

24 Q. Okay. But, it's relationship between the area at the
15:56:03 25 top of the piston to the bottom of the piston?

Eissis - Cross

1 **A.** That's correct, yeah.

2 **Q.** And that's a mathematical relationship, correct?

3 **A.** Yes.

4 **Q.** And the testimony has been that the housing has to be
15:56:17 5 -- the Lubecore housing has to be the size and shape that it
6 is because of that mathematical relationship between the top
7 part and the bottom part of that piston piece, the grease
8 piston and the air piston, right?

9 **A.** Can you -- can you repeat that, please?

15:56:34 10 **Q.** Okay.

11 Well, maybe you don't agree. The outside of -- the
12 outside shape of the housing does not have to follow 100
13 percent the shape of that piston that you have in front of
14 you, does it?

15:56:54 15 **A.** The outside shape of the housing, there's essentially
16 this -- this piston slides through an aluminum housing with
17 a sleeve in it. The out -- in this, there's an air pressure
18 on every transport for about 120 PSI. So 120 PSI worth of
19 air pressure going in here, you have ratio of close to 10 to
15:57:19 20 1, close to a thousand PSI pressure there. So because of
21 the -- because of the size of this piston, and the pressure
22 that goes in there, it is a certain wall thickness of
23 aluminum that has to go around that so it won't explode. If
24 you make that, for example, an eighth of an inch, it could
15:57:49 25 explode because of the air pressure so certain wall thick

Eissis - Cross

1 necessary calculated to hold 120 PSI of air pressure.

2 **Q.** So the sleeve depends on the diameter of the piston?

3 **A.** Excuse me.

4 **Q.** The size of the sleeve depends on the shape of the
15:57:59 5 bottom of the piston?

6 **A.** Which sleeve are you talking about?

7 **Q.** The one that you just said that it's in when it's
8 inside the pump?

9 **A.** Yeah, there's a -- it's an aluminum housing and
15:58:10 10 there's a plastic sleeve that goes inside of that. And the
11 plastic sleeve has the function that it doesn't start
12 corroding on the inside from the air so that this works on
13 plastic instead of aluminum. Like, for example, the second
14 pump there does not have that, and we would get pitted holes
15:58:27 15 in the outside of that tube, and then you would get air
16 leaks that seal. So then now that it's a plastic sleeve in
17 there to prevent that from happening.

18 **Q.** Okay.

19 So the -- your testimony your position is that the
15:58:41 20 outside dimensions of the housing is a reflection of this
21 size of the piston that's inside, right?

22 **A.** No, the outside dimension of the housing is a
23 reflection also of the air pressure that goes in there.

24 **Q.** Okay.

15:58:54 25 And the air pressure that's calculated, depending on

Eissis - Cross

1 the size of the piston and the relationship between the
2 grease piston and the air piston, right?

3 **A.** No, the air pressure is the air pressure. The air
4 pressure is a given. Every truck has the same air pressure,
15:59:14 5 120 PSI, the all the trucks for the brake systems are set
6 for -- 120 PSI.

7 **Q.** So if the bottom part of that piston you have up
8 there, if the bottom part of that piston is smaller, then
9 the thing around it can be smaller, right?

15:59:32 10 **A.** If the bottom part of this piston --

11 **Q.** Then the --

12 **A.** This pistol here is smaller.

13 **Q.** And the thing around it, the shell around it, the
14 thing that houses it can be smaller as well, right?

15:59:44 15 **A.** Yeah, you could do that. If you make this smaller the
16 housing around it could be small as well, yeah.

17 **Q.** And if the -- if the bottom part of the piston,
18 meaning the air piston, is bigger, then that affects the
19 size of the external housing also, right?

16:00:00 20 **A.** That's correct.

21 **Q.** Okay.

22 And so the ratio of the Lubecore piston is about 10 to
23 1; we just established, right?

24 **A.** You said, yeah.

16:00:10 25 **Q.** And the piston relationship, the ratio of the

Eissis - Cross

1 Groeneveld piston isn't 10 to 1, right; it's 9 to 1?

2 **A.** It's very close.

3 **Q.** It's 9 to 1, right?

4 **A.** I would have to calculate that, and it is very close.

16:00:27 5 Like the difference is this. This here, this is the
6 difference. So if I make a mathematical calculation, can't
7 be the same. This is the Lubecore one and this is the
8 Groeneveld one, does not fit.

9 **Q.** You work for Groeneveld and carry those products for a
16:00:58 10 very long time, sir, right?

11 **A.** I did, yeah.

12 **Q.** It's nine to one, isn't it? Do you need me to go find
13 it in the manual?

14 **A.** Pardon?

16:01:08 15 **Q.** Okay. I'm reading from PX Exhibit 10-18. There it
16 is. Nine-to-one ratio. Do you see that there?

17 **A.** Yeah. This Groeneveld pump is that.

18 **Q.** Pneumatically-operated pump?

19 **A.** Yeah. If you look, for example, on the front of that
16:01:33 20 second Groeneveld pump -- if you look on the front of the
21 second Groeneveld pump, it has the ID plate on there that
22 you can have different ratios. That pump is available in 12
23 and a half to one. It's available in 9 to 1, as you saw
24 there. Like Groeneveld has different ratios in that.

16:01:54 25 **Q.** The Groeneveld EP-0 single-line pneumatically-operated

Eissis - Cross

1 pump piston, ratio is 9 to 1, right?

2 **A.** They also have a 12 and a half to 1.

3 **Q.** But, you didn't copy that one, sir. I'm talking about
4 the one that's on the table.

16:02:09 5 **MR. ANASTOS:** Objection.

6 **Q.** That one is 9 to 1, right?

7 **THE COURT:** Then you should have asked that
8 question. Ask him if the one on the table.

9 **Q.** Does the one on the table have the ratio of 9 to 1?

16:02:19 10 **A.** I would have to look at that, the part number of the
11 pump.

12 **Q.** Sir?

13 **A.** It's a 361.

14 **Q.** You, in fact, have testified that the grease piston
16:02:36 15 inside the base of the Lubecore is different than the one in
16 the Groeneveld, right?

17 **A.** Yeah, that's right.

18 **Q.** All right. And you admit that because the internal
19 mechanism inside the housing is different than the

16:02:46 20 Groeneveld? The outside could be shaped differently, and it
21 would still work, right?

22 **A.** Please. Can you repeat that?

23 **Q.** Because the internal mechanism inside the housing --

24 **A.** The piston inside the housing.

16:03:02 25 **Q.** Because the internal mechanism inside the housing of

Eissis - Cross

1 the Lubecore is different than the internal mechanism inside
2 the housing of the Groeneveld?

3 **A.** I am sorry. You're totally confusing me. I have no
4 idea what you're trying to ask me.

16:03:25 5 **Q.** Because the piston inside this guy is different than
6 the piston inside this guy, you admit that the outside
7 things around it could be shaped differently as well?

8 **A.** See the piston diameters on the air.

9 **Q.** Do you agree or not?

16:03:41 10 **A.** Actually no, because I have the two pistons here and
11 if I put them together, you know apart from taller, they're
12 almost the same air piston inside of it. The grease end is
13 different.

14 **Q.** Line 6.

16:04:15 15 "Question: Okay. So there are many differences.
16 That's what you" -- just reading from Page 220, Line 6. "So
17 there are many differences. That's what you said, right?"
18 There was an objection.

19 "Answer: There are differences in the pump, yes.

16:04:30 20 "Question: The internal components inside the
21 housing?

22 "Answer: That's correct.

23 "Question: Okay. So the outside thing that contains
24 it could be shaped differently, right?

16:04:41 25 "Answer: The outside could be shaped differently."

Eissis - Cross

1 Did I read that correct?

2 **A.** Yeah. And if you would shape the outside differently,
3 for example, you put like a bubble on the side, that would
4 have no function. Like when you have -- when you put a
16:04:59 5 bubble on the side of that reservoir, on the -- on that
6 grease cylinder and you would put like a little cork screw
7 thing on it, then that would be something nonfunctional on
8 the outside. This outside housing is a direct result of the
9 size of this piston and the air pressure that's going
16:05:21 10 underneath that piston.

11 **Q.** But, they're different sizes. The Groeneveld and the
12 Lubecore, you just testified, are different sizes?

13 **A.** Yeah, the top of this piston. I can't understand that
14 you don't understand it. I'm sorry. Like you have -- if
16:05:36 15 you look at me for here, this piston here, this piston here
16 comes from the Groeneveld pump. The air side of it is very
17 similar, yeah, but the grease side of it is not similar.
18 The one goes in there, and the other one does not go in
19 there. It won't fit. So the difference lies in the -- the
16:06:04 20 difference lies in the top of the piston, not in the bottom
21 of the piston.

22 **Q.** We're going to talk about it not fitting in a second,
23 but first of all, you just said that the grease piston is a
24 different size, but the -- but the air piston is the same,
16:06:16 25 is that what you just said?

Eissis - Cross

1 **A.** Except for talking -- when I heard Martin testify
2 about tolerances, yeah, tolerances to me, they are very
3 close when I look at these with the naked eye, I don't see
4 the difference in the size of these -- diameter of these
16:06:33 5 pistons.

6 **Q.** There are differences, but you just can't visually see
7 them?

8 **A.** The differences that I can see here on the grease end
9 of it and not the air end of it. The rib shapes are
16:06:45 10 different as well.

11 **Q.** There are differences, but you just can't see them by
12 looking at them, right?

13 MR. ANASTOS: Objection.

14 THE COURT: Sustained.

16:06:52 15 MS. MICHELSON: I mean he just said that.

16 MR. ANASTOS: No, he didn't.

17 THE COURT: No, he didn't say that.

18 MS. MICHELSON: I thought he did.

19 THE COURT: Well, he didn't.

16:06:57 20 MS. MICHELSON: It's hard for me to hear?

21 THE COURT: Well, ask the question.

22 **Q.** So the -- so the bottom part of this could be a
23 different size and you could still achieve the same amount
24 of grease pressure if you made a different calculation,
16:07:08 25 right?

Eissis - Cross

1 **A.** Can you please repeat that?

2 **Q.** The bottom size of the piston could be a different
3 what? The square area of the piston would be?

4 **A.** The square area of the piston?

16:07:29 5 **Q.** Could be a different size, right?

6 **A.** Yeah.

7 **Q.** And you could calculate -- make calculations so that
8 you still achieve the same amount of grease output and
9 grease pressure, right?

16:07:42 10 **A.** No, that's impossible.

11 **Q.** And air pressure?

12 **A.** That's impossible. Because the air piston and grease
13 piston and the stroke give you the volume, yeah, so if you
14 make this smaller, and you keep that the same, the ratio
16:07:59 15 changes and you are going to get grease piston.

16 **Q.** Right. You change the way your piston look, but can
17 create the same results? You can get the same pressure.
18 You can get the same pressure, right?

19 **A.** You make it smaller, you get less pressure.

16:08:14 20 **Q.** If you --

21 **A.** Small, less volume. You need about 40 CC's of grease
22 to make a grease system work.

23 **Q.** If you keep the ratio the same, though, that's not so,
24 right?

16:08:23 25 **A.** Excuse me?

Eissis - Cross

1 Q. You can keep the ratio the same. The sizes can be
2 different, but the ratio can be the same?

3 A. No, when the sizes are different, the ratio is not the
4 same. You're incorrect.

16:08:35 5 Q. Leak 1 to 20 is the same 2 to 40, isn't it? Same
6 ratio, isn't it, sir?

7 A. You're right about that, yeah.

8 Q. So I'm correct. Now, I withdraw that.

9 So you just said something about so the part --
16:08:58 10 internal parts actually don't fit together of the Groeneveld
11 and the Lubecore. Did you just say that? It looks like
12 it's the same --

13 A. What I just said is that this Groeneveld piston does
14 not fit in the Lubecore piston, that's correct.

16:09:11 15 Q. So the parts of the two systems, the internal parts,
16 in fact, are not compatible and interchangeable with each
17 other, are they?

18 A. You have to -- what we do with that, you have to -- if
19 you want to replace internal components in the pump, you
16:09:25 20 have to replace those as a group of components. So if I
21 wanted to put -- see this air piston is pretty close to the
22 same size. So I wanted to put a Lubecore piston in a
23 Groeneveld pump, as I explained earlier, then I would also
24 have to put the grease piston with it. So what you do then
16:09:41 25 is you would have to take this grease piston outside the

Eissis - Cross

1 Groeneveld pump and you make it a set. So this and this,
2 this hole to me is the same, very close. And if you would
3 stick that in the Groeneveld pump and you change this one as
4 well, then you could make that work and probably display as
16:10:00 5 well, probably different here as well. Then you put like a
6 little kit in there, and like same reservoir, you have that
7 six kilogram pump. If you look closely at them, I can see
8 where the bear -- the height about this is different so the
9 reservoir would fit, and I would also have to replace the
16:10:19 10 guide rod to make it whole, set fit. So you have to make a
11 little replacement set instead of just part for part. So --
12 but the pump, as I explained earlier, can just be bolted in
13 place of the Groeneveld, Bijur, Ecostar.

14 **Q.** So the -- so the Lubecore pump -- so the Lubecore
16:10:38 15 parts are not compatible with leading brands, are they?

16 **A.** Okay. You are totally taking it out of context again
17 because I just explained to you that the Lubecore parts you
18 talk about, Lubecore parts, this system has 50 other
19 components in it besides the pump. So there's lining,
16:10:56 20 there's fittings, there is solder rod. It's a timer, riding
21 harnesses, you know, the reservoir glass on the four
22 kilogram pump, I think can be just changed the six. We give
23 instruction to our distributors if they want to put a
24 reservoir glass on, a six kilogram glass on a Groeneveld
16:11:15 25 pump, you have to replace a set. You cannot just do that.

Eissis - Cross

1 Same thing here. If my distributor would try to change a
2 piston or an O-ring only, it won't fit. So we give
3 instructions to them in a technical bulletin. If you want
4 to do that, then you need to do this as a set as a kit, so.

16:11:32 5 Q. So the pump --

6 A. Compatible lines are compatible. This is, that is
7 not, and we instruct our distributors what is and what is
8 not.

9 Q. So the internal components of the two pumps are not
16:11:47 10 compatible?

11 MR. ANASTOS: Objection.

12 THE COURT: Overruled.

13 THE WITNESS: This piston by itself, this
14 piston by itself is not compatible.

16:12:02 15 Q. Okay. So -- and they're not interchangeable?

16 A. They are interchangeable, as I said.

17 Q. Well, Mr. Martin Vermeulen said they're not. Do you
18 disagree with him? According to you, he's the guy that
19 put --

16:12:15 20 A. I don't agree with Martin on that because I know if
21 you put these two together, it actually works.

22 Q. If you add extra things to it, you can kind of cut and
23 paste and fit?

24 A. Yeah.

16:12:25 25 Q. Okay.

Eissis - Cross

1 Mr. Martin Vermeulen said if you try to do such a
2 thing you're going to have problems and he, in fact, has
3 seen that occur. Do you recall his testimony?

4 A. Yeah, I heard him say that, yeah.

16:12:39 5 Q. So -- and he actually seen problems with that,
6 remember that?

7 MR. ANASTOS: Objection.

8 THE COURT: Objection sustained.

9 Q. 66-1 and 2, Plaintiff's Exhibit. This is promotional
16:13:01 10 material that Lubecore prepares and gives to its
11 distributors and end user customers?

12 A. That's correct.

13 Q. And here's the reverse of it. I'll just turn it over.
14 You recognize that?

16:13:14 15 A. Yeah, I do.

16 Q. Okay. And there are pictures of your pumps here, the
17 four liter and then the six liter?

18 A. Yeah.

19 Q. Okay. And here it says right next to the picture,
16:13:31 20 parts are compatible with leading brands?

21 A. Yeah.

22 Q. Okay. No other explanation there, sir, is there?

23 MR. ANASTOS: Objection.

24 THE COURT: Objection overruled.

16:13:37 25 Q. That means you can answer the question.

Eissis - Cross

1	A. Excuse me?
---	----------------------

2 **Q.** There's no further explanation in your promotional
3 materials and brochures that are handed out to your
4 distributors that you prepare and that end up in the hands
5 of end users?

6 **A.** Without further explanation comes in by means of
7 technical bulletins, to our distributors. You don't put it
8 all on a brochure would be much for customers, we keep it
9 clean.

10 Q. Go to customers, meaning end users, this Plaintiff's
11 Exhibit 66, right?

12 **A.** It goes to end user, yeah.

13 | **Q.** Lubecore offers a warranty program, right?

14 **A.** That's correct.

15 Q. And the warranty program basically is that if you use
16 Lubecore's Steadylube, brand grease with an EP-0 ALS system,
17 you provide a manufacturer's warranty, right?

18 **A.** No, actually they provide, always provide
19 manufacturer's warranty. We provide additional warranty if
20 you use the Lubecore grease.

21	Q. Thank you.
----	---------------

22 THE COURT: How much more do you have of this
23 witness?

24 MS. MICHELSON: A bit.

25 THE COURT: Okay, folks. We have a couple

Eissis - Cross

1 other things to do this afternoon. So what we'll do is
2 break for the day. I'm sure that won't meet with too much
3 protest.

4 (Laughter.)

16:14:56 5 THE COURT: So I think that we're winding
6 down. We may -- the case may conclude tomorrow, which means
7 you may hear all the evidence that's going to be presented
8 and the next order of business, of course, would be the
9 arguments of the lawyers. And then I will instruct you on
16:15:09 10 the law that applies in the case.

11 So it's important that you still maintain an open
12 mind, that you don't form or express any opinion about any
13 aspect of the case. Keep an open mind about it, and then
14 wait until you hear everything before you start coming to
16:15:22 15 conclusion, have a good evening and we'll meet the same
16 time, same place.

17 (Proceedings in the absence of the jury:)

18 THE COURT: We took this little break to
19 prepare ourselves for the end of the case. And the
16:16:02 20 Plaintiff -- excuse me. The Defendants have patiently
21 waited to argue their Rule 50 motion. So you're welcome to
22 do it.

23 MR. ANASTOS: Thank you, your Honor.

24 Groeneveld has asserted several claims against the
16:16:24 25 Defendant Lubecore. Many of them turn on the same issues

Eissis - Cross

1 with respect to trade dress. So the Rule 50 motion will
2 address all of the claims asserted by Groeneveld, and I'll
3 start initially with the trade dress.

4 We all know so far, or we all know in this case, they
16:16:43 5 have to establish three things. Two things in order to
6 establish that they have trade dress is protectable, and the
7 third is to establish that there's confusion in the
8 marketplace.

9 To establish protectability, they must establish that
16:16:54 10 they're --

11 THE COURT: Are you doing that? Are you doing
12 that or am I doing that? I'm trying to get the lectern on.

13 DEPUTY CLERK: Oh, sorry. I turned it off.

14 THE COURT: We have to play this, too. Hate
16:17:20 15 to have you do all this work and not have you and Ms.
16 Michelson recorded for posterity.

17 MR. ANASTOS: Right.

18 THE COURT: Okay, Tom. Go ahead.

19 MR. ANASTOS: Okay.

16:18:51 20 The Rule 50 motion will address all the claims
21 asserted by Groeneveld in this case --

22 THE COURT: Oh.

23 MR. ANASTOS: Tape 3.

24 (Laughter.)

16:18:59 25 THE COURT: You're supposed to be a good

Eissis - Cross

1 actor. So false starts and stops.

2 (Laughter.)

3 MR. ANASTOS: Cue me, please.

4 THE COURT: You want to practice and --

16:19:08 5 MR. ANASTOS: Already got two shots at it.

6 Lubecore hereby moves under Rule 50 for judgment, as a
7 matter of law, under all the claims asserted against it by
8 Groeneveld Transport Efficiency, Inc. in this case on the
9 ground that there's insufficient evidence to send the case
16:21:35 10 to the jury on any of the claims, and that Lubecore is
11 entitled to judgment as a matter of law.

12 A few of the claims stem from the Lanham Act, Section
13 1125(a).

14 THE COURT: You don't have to speak that fast
16:21:46 15 now.

16 MR. ANASTOS: You told me you only have --

17 THE COURT: I know, but that doesn't mean you
18 pick up the pace. Focus. Focus on what's important.

19 (Laughter.)

16:21:54 20 MR. ANASTOS: They have to prove three things
21 to prove a trade dress case.

22 THE COURT: Who does?

23 MR. ANASTOS: The Plaintiff.

24 THE COURT: All right.

16:22:00 25 MR. ANASTOS: Groeneveld. Two of the things

Eissis - Cross

1 to establish that they have protectable trade dress, and the
2 third, that there is confusion.

3 The first element they must prove is that the
4 configuration of the EP-0 pump at issue in this case is
16:22:15 5 nonfunctional. Under Sixth Circuit law -- and I would be
6 glad to either start reciting the cites to you --
7 functionality is a question of engineering necessity. If
8 engineering necessity --

9 THE COURT: Let me stop you and ask you a
16:22:31 10 question.

11 MR. ANASTOS: Sure.

12 THE COURT: Who has to prove whether the item
13 that they're seeking trade dress protection for is
14 nonfunctional?

16:22:41 15 MR. ANASTOS: Plaintiff.

16 THE COURT: Is there any evidence in this case
17 to prove that?

18 MR. ANASTOS: No.

19 THE COURT: Go on.

16:22:48 20 MR. ANASTOS: Secondly, they must prove that
21 they're --

22 THE COURT: I'm sorry. I interrupt you again.
23 If they can't prove that, is the case over?

24 MR. ANASTOS: Yes, it is, your Honor. They
16:22:57 25 will fail to establish the elements even for protectability.

Eissis - Cross

1 The second element they have to prove is secondary
2 meaning; meaning that in the eyes of the public, the look of
3 that pump evokes the source of the pump Groeneveld rather
4 than the look, rather than that pump itself. There has been
16:23:17 5 zero testimony in this case that in the eyes of the public,
6 the look of that pump identifies Groeneveld. The testimony
7 in this case has been that the pump is advertised 1,000
8 percent of the time with its green Groeneveld label on it.
9 There's been zero evidence in this case that anybody has
16:23:36 10 ever seen the pump without the big green Groeneveld label on
11 it.

12 It is advertised with other pumps that Groeneveld has.
13 It has no Groeneveld -- Groeneveld does not hold it out to
14 the world as being any kind of a special pump despite the
16:23:50 15 testimony you have heard. We've seen exhibits where on
16 promotional display vehicles, there are two or three pumps
17 displayed. We have seen exhibits where on a -- an exhibit
18 where on a repair truck of some kind, where the EP-0 pump
19 was on one side and a completely different pump was on the
16:24:12 20 other side, meaning that Groeneveld was not trying to
21 attract any particular attention to the EP-0 pump. We saw
22 the web page. We heard Ms. Wilson testify that there's this
23 great grand corporate policy that everything has to focus
24 around the EP-0 pump. We looked at the web page. The EP-0
16:24:31 25 pump was not on the cover of the web page. And when you get

Eissis - Cross

1 into the automatic lubrication systems applicable to
2 transportation systems, vehicles of the kind in issue here,
3 again, it was just one of several pumps there.

4 The only people who even remotely testified about
16:24:50 5 secondary meaning that were outside of the Groeneveld
6 people -- and I have no doubt when the Groeneveld people
7 look at the pump, they think of Groeneveld. They work at
8 Groeneveld. They're around it all the time. And that's the
9 same answer for Mr. DeCleene. Mr. DeCleene is a customer of
16:25:05 10 Groeneveld. He has purchased a lot of these over his life
11 time. He has a fleet. I have no doubt that when he sees
12 the shape of the pump, that he thinks that it is a
13 Groeneveld pump. But, that's not the question. The
14 question is in the eyes of the buying public itself, the
16:25:22 15 customers and the trucking industry that might be interested
16 in purchasing these pumps, does anybody associate the look
17 of that pump with Groeneveld. And I submit that there's
18 been zero testimony from anybody in the public on that
19 front.

16:25:44 20 There was not even one person who testified, any
21 non-Groeneveld purchaser or interested purchasers that said
22 that when they look at the shape of that pump, they think of
23 Groeneveld. And just basically, when we look at all the
24 marketing materials, we look at the advertising. One of the
16:26:04 25 factors in secondary meaning is advertising. There were

Eissis - Cross

1 numbers that were given by Ms. Wilson for advertising in the
2 United States. There was not a single break down of those
3 numbers with respect to is it advertising for this pump,
4 this pump, this pump, this pump, or that pump and I think
16:26:20 5 they have at least five or six of them. The raw numbers
6 tell you absolutely nothing about what Groeneveld is
7 spending its advertising on, and even more importantly,
8 there was zero testimony that any advertising whatsoever is
9 spent on trying to formulate a link in the mind's eye
16:26:38 10 between the shape of that pump and the name Groeneveld.

11 All of the testimony in this case has been that the
12 pump is out there with its label on all of the time. And
13 again, if they don't prove functionality, we don't have to
14 get to secondary meaning. And if they don't prove secondary
16:26:56 15 meaning, we don't have to get to likelihood of confusion.

16 THE COURT: Who testified in the Plaintiff's
17 case on the creation of the Groeneveld pump?

18 MR. ANASTOS: Mr. Van der Hulst.

19 THE COURT: And what did he say?

16:27:10 20 MR. ANASTOS: Mr. Van der Hulst is of the
21 opinion that the pump was designed with a distinctive look
22 to it. He also was of the opinion that in terms of
23 functionality, which is primarily I think what he was
24 testifying about, he testified -- he testified that the base
16:27:28 25 of the pump optimizes the amount of material that's there.

Eissis - Cross

1 The base of the pump conforms, essentially conforms to the
2 internal workings of the pump. That you don't waste any
3 aluminum by adding more to it than needs to be there, which
4 only makes common sense. Everybody wants to make a product
16:27:45 5 that they can -- that they can source at the lowest cost
6 possible. And he testified that the cylinder on top of that
7 is simply a cylinder that matches the size of the base. And
8 if you made that cylinder of a larger diameter, then the
9 base would have to be of a larger diameter, which would take
16:28:04 10 more metal, and the whole thing would cost more.

11 Similarly, the height of the cylinder is not driven by
12 any sort of arbitrariness. It's not driven by any idea to
13 put some fanciful design into this thing. It's driven
14 entirely by the amount of grease the thing holds so that a
16:28:25 15 truck driver can make -- get the grease pump filled up when
16 it's going in -- when he's taking the truck in for regular
17 mileage service intervals.

18 THE COURT: Did he testify any aspect of the
19 design was nonfunctional?

16:28:38 20 MR. ANASTOS: He did not testify any aspect
21 was nonfunctional.

22 THE COURT: Okay.

23 MR. ANASTOS: That would take us to likelihood
24 of confusion, which --

16:28:53 25 THE COURT: Let me ask you for the likelihood

Eissis - Cross

1 of confusion. Who's that directed to; is it the general
2 public or is it to --

3 MR. ANASTOS: Consumers.

4 THE COURT: To the consumer. That means the
16:29:02 5 people who are going to buy the --

6 MR. ANASTOS: Correct.

7 THE COURT: -- item?

8 MR. ANASTOS: The -- there has been zero
9 evidence of any actual confusion in this case.

16:29:14 10 The Sixth Circuit looks for customer surveys. There's
11 none of that. There's no evidence of -- there was no
12 evidence at all of -- any customer in this case ever was
13 confused about purchasing anything. In fact, we were -- if
14 you look at our witness list, we were going to -- we were
16:29:30 15 going to use the deposition of Steve Osborn in our case, if
16 they had decided not to use it after they took it because he
17 is -- he's another guy who has purchased both systems and
18 testified unequivocally that he knew exactly what he was
19 getting. He buys some of the Groeneveld ones, he buys some
16:29:47 20 of the Lubecore ones. He never for a moment said oh, gee, I
21 think this one is that one or this one is that one.

22 THE COURT: Didn't Mr. Wapenaar testify that
23 even anybody with 20/20 vision can tell the difference?

24 MR. ANASTOS: Mr. Who?

16:29:58 25 THE COURT: Mr. Wapenaar.

Eissis - Cross

1 MR. ANASTOS: Yes. I mean who couldn't? I
2 mean all of the evidence -- aside from the lack of -- the
3 reason there's no testimony of actual confusion in the
4 marketplace is that there is no possible way to confuse the
16:30:11 5 looks of these pumps or the sales of these pumps.

6 They're not sold by the same people. They're not
7 marketed by the same people. The looks are incredibly
8 different in terms of the branding of the red, the follower
9 plate, the red label, Lubecore's trademark on top of it,
16:30:30 10 Lubecore's trademark on the identification plate on the
11 front, Lubecore's trademark on the top of the pump, and
12 Lubecore's trademark emblazoned, I think, two times in the
13 base of the pump.

14 There's no confusion because there's just no
16:30:46 15 confusion. Everybody looks at the labels. The Groeneveld
16 world here is that you have to suspend belief in labels.
17 They can only win this case if everybody believes the labels
18 are meaningless, and none of us believe the labels are
19 meaningless.

16:30:58 20 THE COURT: That's not true. The -- they have
21 to prove non -- that the design was nonfunctional, right?

22 MR. ANASTOS: They have to prove three things.

23 THE COURT: Yeah. You talk about the
24 confusion aspect.

16:31:09 25 MR. ANASTOS: I'm on the confusion aspect.

Eissis - Cross

1 Yes, your Honor. There was no testimony at all whatsoever
2 of any kind of confusion in the marketplace, and in fact,
3 the testimony that we heard from everybody was -- even
4 Mr. Wapenaar -- "I didn't know what it was when I first saw
16:31:21 5 it. I walked up to it, and it had a Lubecore label on it
6 and I knew it was a Lubecore." That's what everybody has
7 testified to. There has been no testimony in this case of
8 somebody calling up Groeneveld. Even if they had this, of
9 course, they would have somebody testify, saying I'd really
16:31:38 10 like to buy that red pump of yours. Not there. Zero. No
11 testimony of anyone calling up Lubecore and saying, "Gee,
12 I'd really like to buy that green pump of yours." It's not
13 there. There's no consumer -- no consumer confusion in the
14 marketplace for these products.

16:31:54 15 Second aspect or another aspect to the lack of
16 confusion goes to the sophisticated customer base and the
17 type of sales that these are. These are not impulse
18 purchases, and I've used that analogy a few times of people
19 going into the drugstore and after they purchase the things
16:32:12 20 they want, walking up to the counter and buying some
21 skittles or something. These are items that -- and the
22 testimony is absolutely constant on both sides. These are
23 items that require several sales visits for somebody to
24 consider whether or not they are going to purchase it.
16:32:29 25 First of all, they have to be -- they have to be convinced

Eissis - Cross

1 in the first place they're even interested in purchasing an
2 ALS system. And from the testimony we've heard so far, the
3 penetration has not been that incredibly deep in the United
4 States with these systems, but they have to be convinced of
16:32:44 5 that first. They have to see pricing, they have to
6 understand how it works, they have to understand the
7 reliability, they have to make a cost benefit decision as to
8 whether or not they want to go with anybody's product, and
9 this is not something that is done on a one-time visit. So
16:32:59 10 the sophistication of the customer base also dictates that
11 there's no confusion.

12 They work with the sales people. They get the
13 literature from the sales people. And there's been no
14 testimony that any customer when seeing the Lubecore
16:33:12 15 literature or talking to a Lubecore salesperson has again
16 thought they were buying a Groeneveld pump.

17 THE COURT: Let's have Ms. Michelson address
18 these issues. And if there's something more we can do
19 tomorrow morning, we can do that. Is that fair?

16:33:27 20 MR. ANASTOS: Fair enough.

21 MS. MICHELSON: Thank you, your Honor.

22 Your Honor, I -- your Honor, as I listened to
23 Mr. Anastos, I heard him say several times that despite the
24 testimony, despite the evidence, and arguing the weight of
16:33:52 25 it, which is not the appropriate inquiry obviously, if

Eissis - Cross

1 there's any testimony on the point, then it is appropriate
2 to submit it to the jury. I understand the Defense does not
3 -- has a different view of the evidence, but --

4 THE COURT: What's your claim?

16:34:08 5 MS. MICHELSON: On the trade dress?

6 THE COURT: Um-hum.

7 MS. MICHELSON: The thing doesn't -- he
8 intentionally imitated, looks exactly the same. It doesn't
9 need to look that way in order to function. It doesn't --
16:34:17 10 it's not only a shape case, but it's also a shape case.

11 It's a configuration case. It's the overall appearance of
12 the thing is a Groeneveld. And it is an intentional copy.
13 I think the evidence is really --

14 THE COURT: Now, take a deep breath.

16:34:32 15 So your claim is a trade dress violation under the
16 Lanham Act on the design of the Lubecore pump?

17 MS. MICHELSON: Yeah, the overall.

18 THE COURT: Design.

19 MS. MICHELSON: Visual, external look of the
16:34:47 20 pump.

21 THE COURT: What is that called; the design of
22 the Lubecore pump?

23 MS. MICHELSON: They call it sometimes product
24 configuration, shape cases. They used to call them design.

16:34:55 25 THE COURT: Okay.

Eissis - Cross

1 And do you agree with Mr. Anastos that you have to
2 prove the three elements of functionality or
3 nonfunctionality, and secondary meaning if you prove that
4 it's nonfunctional, your product is nonfunctional and
16:35:11 5 confusion in the marketplace?

6 MS. MICHELSON: The Plaintiff bears the burden
7 of proof on that, your Honor.

8 THE COURT: What evidence did you offer to
9 show that the -- your pump is nonfunctional? The design,
16:35:25 10 the design of your pump is not nonfunctional?

11 MS. MICHELSON: The external shape of the
12 pump, the external presentation of it is a shell in which
13 the internal functional components are housed. It does not
14 have to be --

16:35:39 15 THE COURT: No. I said what evidence.

16 MS. MICHELSON: Oh. Mr. Van der Hulst
17 testified to that. Mr. Eissis testified to that.
18 Mr. Eissis said in the excerpts that we read into the record
19 and saw him on his videotape that it does not have to be
16:35:55 20 arranged exactly this way to work.

21 THE COURT: No, no. Don't be talking about
22 Eissis, Mr. Eissis. We're talking about the Groeneveld
23 pump.

24 MS. MICHELSON: No, those are admissions.

16:36:03 25 THE COURT: We're talking about the Groeneveld

Eissis - Cross

1 pump. What evidence do you have that the Groeneveld pump
2 design is nonfunctional?

3 MS. MICHELSON: Mister --

4 THE COURT: You have to prove that, right?

16:36:14 5 MS. MICHELSON: Yes.

6 THE COURT: Okay. And I was just asking what
7 evidence do you have.

8 MS. MICHELSON: Mr. Van der Hulst testified
9 that it is not essential -- that it could be shaped
16:36:22 10 differently on the outside and still function, that it is --
11 that the functional components are inside the housing of the
12 pump.

13 THE COURT: So there's somewhere in the
14 evidence that you can find for me by tomorrow morning that
16:36:32 15 he testified that they could have designed the exterior look
16 differently and have the same -- that the design here is
17 nonfunctional?

18 MS. MICHELSON: Yes.

19 THE COURT: Okay. I'll be looking forward to
16:36:45 20 seeing that because I don't remember him saying that.

21 MS. MICHELSON: We'll -- we'll put it on --

22 THE COURT: That really seems to me that we
23 listened to a week of testimony, and Judge Baughman listened
24 to a week of testimony, and come down to the ultimate issue
16:36:59 25 here is that -- if I listened -- this is not what you have

Eissis - Cross

1 to prove, of course, but the -- Mr. Vermeulen said that
2 every aspect of the Lubecore pump is 100 percent functional.

3 MS. MICHELSON: Well, your Honor, the fact
4 that the parts have a function, that does not mean the way
16:37:18 5 they are arranged is essential to the use and purpose of the
6 item which that --

7 THE COURT: Okay. I'll look forward to
8 tomorrow morning you finding me something that you offered
9 in your case-in-chief that would show that the Groeneveld
16:37:32 10 pump design is nonfunctional so the jury could come to that
11 decision, so they could then go to Step 2 and/or Step 3.

12 MS. MICHELSON: Okay.

13 THE COURT: Okay.

14 MR. ANASTOS: May I say one more thing, your
16:37:45 15 Honor?

16 THE COURT: Um-hum.

17 MR. ANASTOS: As a matter of law, this issue
18 could it have been designed a different way, it's a red
19 herring.

16:37:51 20 THE COURT: It is. I understand that. And
21 that doesn't mean that -- you have to have evidence in your
22 case to show that the design is nonfunctional. That is your
23 claim that you said the appearance or the look or whatever,
24 and then somebody has to testify, some -- with the authority
16:38:08 25 to do that to say that it was designed that way and it's

Eissis - Cross

1 nonfunctional. Okay.

2 MS. MICHELSON: The look or the outside look,
3 appearance of it and the shape on the outside is not
4 dictated by what's going on on the inside, and we will look
16:38:23 5 in the record and have that for you.

6 THE COURT: Well, all right. You know what
7 I'm saying?

8 MS. MICHELSON: I do.

9 THE COURT: Because I've been trying to listen
16:38:29 10 very carefully throughout the whole trial about that. When
11 I read Judge Baughman's opinion, he was pretty clear he
12 heard all this similar evidence anyway and found that there
13 was -- the design of the Groeneveld pump was nonfunctional.

14 MS. MICHELSON: And the same way that a car,
16:38:47 15 the engine is on the inside, that's what makes it go, but
16 that doesn't mean the outside has to look in exactly a
17 particular way for it to drive down the street.

18 THE COURT: I'll hear you tomorrow morning.

19 MS. MICHELSON: Okay.

16:38:57 20 THE COURT: All right?

21 MS. MICHELSON: I have something here they're
22 pulling up quickly, or do it tomorrow?

23 THE COURT: You can read it to me.

24 MS. MICHELSON: Part 4, Part 4.

16:39:13 25 MR. KUNSELMAN: Your Honor, this is from the

Eissis - Cross

1 video.

2 MS. MICHELSON: EP-0 did not have to look this
3 way on the outside. It could have looked different and
4 still functioned the same.

16:39:22 5 MR. KUNSELMAN: Part 4 --

6 THE COURT: That's not the testimony, that
7 they could have made it differently. The test is, is it
8 made in a way that -- in a functional way. That's the test;
9 not could you do something different. That's what -- what
16:39:40 10 is it, Caryoto or something --

11 MR. ANASTOS: The inward test, it's
12 functional, essential to the use or purpose of the article
13 or it affects the cost or quality of the article.

14 MS. MICHELSON: It's not essential if you
16:39:50 15 could make the shape and the configuration the way it looks
16 on the outside differently, and it would still work, it's no
17 longer essential.

18 MR. ANASTOS: But, the whole testimony was
19 that it affects the cost or quality to --

16:40:00 20 THE COURT: Right. I guess the answer is did
21 you have somebody -- why did they make it this way?

22 MS. MICHELSON: I believe Mr. Van der Hulst
23 said because they did the inside first and then they put
24 something around it. Commercial people were involved in the
16:40:16 25 process of getting the product to market so it would have a

Eissis - Cross

1 distinctive look, and because it did look different from
2 everybody else's that was on the market and it actually
3 does -- we've shown it does look different from everybody
4 else's on the market, and I believe he said there was --
16:40:30 5 there was an effort to do that to distinguish themselves in
6 the marketplace and when they entered with their own
7 proprietary product.

8 THE COURT: All right. I'll look forward to
9 seeing that tomorrow.

16:40:43 10 MS. MICHELSON: Okay.

11 THE COURT: Okay? All right. We'll see you
12 same time.

13 MR. ANASTOS: 8:00? 8:00 or 8:30?

14 THE COURT: I'll be here 8:15 so we can talk
16:40:52 15 about this. We have to deal with this because I don't
16 remember that testimony. Remember what the test is.

17 MS. MICHELSON: I will, and we will look.

18 THE COURT: Okay. I suggest to you relook at
19 Judge Baughman's opinion, too, and the definitions. All
16:41:10 20 right?

21 See you in the morning.

22 (Proceedings adjourned at 4:41 p.m.)

23

24

25

Eissis - Cross

1 DIRECT EXAMINATION OF JAN EISSLIS U

2 CROSS-EXAMINATION OF JAN EISSLIS

3

4 C E R T I F I C A T E

5 I certify that the foregoing is a correct

6 transcript from the record of proceedings in the

7 above-entitled matter.

8

9

10

11 s/Shirle Perkins
12 Shirle M. Perkins, RDR, CRR
13 U.S. District Court - Room 7-189
14 801 West Superior Avenue
15 Cleveland, Ohio 44113
16 (216) 357-7106

15

16

17

18

19

20

21

22

23

24

25